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ABSTRACT

This overview of recent state juvenile justice reform measures and identifies issues and trends associated with state juvenile reform initiatives. The report explains some of the more punitive measures, such as new criminal court transfer authority and expanded juvenile court sentencing options. Many states have balanced these steps with enhanced resources and new programs designed to interrupt the development of youth violence and victimization. This document includes selected case studies of the implementation of such balanced initiatives in four states: (1) Colorado; (2) Connecticut; (3) Ohio; and (4) Oregon. Each case study describes the elements of the state's reform initiatives and the catalysts for change. A final chapter summarizes the juvenile justice reform trends in general terms and makes recommendations based on state experiences. (SLD)

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Program Report

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Office of Juvenile Justice and Delinquency Prevention

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) was established by the President and Congress through the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, Public Law 93–415, as amended. Located within the Office of Justice Programs of the U.S. Department of Justice, OJJDP's goal is to provide national leadership in addressing the issues of juvenile delinquency and improving juvenile justice.

OJJDP sponsors a broad array of research, program, and training initiatives to improve the juvenile justice system as a whole, as well as to benefit individual youth-serving agencies. These initiatives are carried out by seven components within OJJDP, described below.

Research and Program Development Division develops knowledge on national trends in juvenile delinquency; supports a program for data collection and information sharing that incorporates elementsof statistical and systems development; identifies how delinquency develops and the best methods for its prevention, intervention, and treatment; and analyzes practices and trends in the juvenile justice system.

Training and Technical Assistance Division provides juvenile justice training and technical assistance to Federal, State, and local governments; law enforcement, judiciary, and corrections personnel; and private agencies, educational institutions, and community organizations.

Special Emphasis Division provides discretionary funds to public and private agencies, organizations, and individuals to replicate tested approaches to delinquency prevention, treatment, and control in such pertinent areas as chronic juvenile offenders, community-based sanctions, and the disproportionate representation of minorities in the juvenile justice system.

State Relations and Assistance Division supports collaborative efforts by States to carry out the mandates of the JJDP Act by providing formula grant funds to States; furnishing technical assistance to States, local governments, and private agencies; and monitoring State compliance with the JJDP Act.

Information Dissemination Unit informs individuals and organizations of OJJDP initiatives; disseminates information on juvenile justice, delinquency prevention, and missing children; and coordinates program planning efforts within OJJDP. The unit's activities include publishing research and statistical reports, bulletins, and other documents, as well as overseeing the operations of the Juvenile Justice Clearinghouse.

Concentration of Federal Efforts Program promotes interagency cooperation and coordination among Federal agencies with responsibilities in the area of juvenile justice. The program primarily carries out this responsibility through the Coordinating Council on Juvenile Justice and Delinquency Prevention, an independent body within the executive branch that was established by Congress through the JJDP Act.

Missing and Exploited Children's Program seeks to promote effective policies and procedures for addressing the problem of missing and exploited children. Established by the Missing Children's Assistance Act of 1984, the program provides funds for a variety of activities to support and coordinate a network of resources such as the National Center for Missing and Exploited Children; training and technical assistance to a network of 47 State clearinghouses, nonprofit organizations, law enforcement personnel, and attorneys; and research and demonstration programs.

The mission of OJJDP is to provide national leadership, coordination, and resources to prevent juvenile victimization and respond appropriately to juvenile delinquency. This is accomplished through developing and implementing prevention programs and a juvenile justice system that protects the public safety, holds juvenile offenders accountable, and provides treatment and rehabilitative services based on the needs of each individual juvenile.

Juvenile Justice Reform Initiatives in the States: 1994 –1996

Program Report

National Criminal Justice Association

Shay Bilchik, Administrator
Office of Juvenile Justice and Delinquency Prevention

October 1997

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Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of OJJDP or the U.S. Department of Justice.

The Office of Juvenile Justice and Delinquency Prevention is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office for Victims of Crime.

Foreword

Juvenile crime and violence continue to be serious problems in our Nation. In 1994, more than 150,000 juveniles were arrested for violent crimes—murders, rapes, robberies, and aggravated assaults. From 1985 to 1994, the rate of murders committed by teens ages 14 to 17 increased 172 percent. Many of these offenders were friends and acquaintances of their victims.

As Governors, we are concerned about juvenile violence and must find ways to combat it. States and communities are implementing innovative strategies to stem the tide of juvenile violence, from parental responsibility laws to prevention and early intervention programs to initiatives that allow the most violent and intractable youth to be tried in adult court. Some methods seem to be working, considering recent press accounts and Government reports on the decline in juvenile violence arrests in 1995.

Despite the recent leveling off of juvenile crime rates, we must not lose sight of the fact that the incidence of youth crime and violence is far too prevalent in our communities. Therefore, we must continue to develop efficient and effective programs to prevent and deter young people from committing crimes, and we must find swift and effective methods of sanctioning those who do.

Violent crime tears at the very fabric of civilized society. It fills citizens with fear, causes them to rearrange their lives, and discourages them from venturing from their homes. Our citizens living in public housing developments, for example, suffer when the entire complex is ravaged by gang violence. Children miss school—not to play hooky, but to play it safe by staying at home. Businesses find it difficult, if not impossible, to operate in a climate of violence and intimidation, a climate that makes customers too afraid to shop. Many people leave our inner cities and crime-ridden neighborhoods.

Our citizens have a right to be free from the fear of crime, whether in their homes, on the streets, or in any other place in their communities. They expect the government to provide for their safety and protection.

We Governors are leading the way in attacking crime, especially juvenile crime. This report demonstrates that States are finding innovative methods of dealing with juvenile violence. It is a major analysis of the tools being used to combat violence, with an indepth focus on the comprehensive juvenile justice reform that is taking place in four States—Colorado, Connecticut, Ohio, and Oregon.

I wish to thank the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention for providing the funding for the report and the National Criminal Justice Association (NCJA) for developing it. NCJA's work with the National Governors' Association through the years has produced many innovative policies to assist Governors in tackling the crime problem.

Whatever juvenile crime initiatives the Federal Government may choose to undertake in the future, the States, because of our system of government, will retain the primary responsibility and authority for dealing with youth violence. And we must be willing and able to perform. I hope that tools such as this report will help Governors and other State officials make appropriate and better informed decisions.

Governor Bob Miller
Chairman
National Governors' Association

Acknowledgments

This report, *Juvenile Justice Reform Initiatives in the States: 1994–1996*, reflects the skill and diligent work of the National Criminal Justice Association (NCJA) staff; the numerous Federal and State officials who contributed generously of their time to help expedite this project; and other organizations that shared their contributions to the field of State juvenile justice policy for compilation in this report.

The project staff is grateful to U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP) Administrator Shay Bilchik for his review and continued guidance on the report. OJJDP Deputy Administrator John Wilson and Project Monitor Eileen Garry also provided valuable advice and insight through their review of the report during various stages of its development. Further, Nolan Jones, director of the Human Resources Group of the National Governors' Association (NGA), also provided insight and commentary on the report.

The NCJA project staff would also like to extend a special thanks to former NCJA Executive Vice President Gwen A. Holden, who was instrumental in the development of the project and went beyond the call of duty to contribute to its substance after she had completed her 21-year tenure with NCJA.

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Preface

I am pleased to present *Juvenile Justice Reform Initiatives in the States: 1994–1996*, an overview of recent State juvenile justice reform measures. This report, prepared under a grant from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, represents the dedicated efforts of the staff of the National Criminal Justice Association, working in affiliation with the National Governors' Association.

State juvenile justice systems recently have undergone a paradigm shift in their approach to the problem of preventing and responding to juvenile crime. The consequences and future implications of heightened rates of juvenile violence during the past decade have spurred State policymakers to initiate new programs and State legislators to enact new legislation that places a greater emphasis on public safety, imposes greater penalties for violent juvenile offenders, and creates innovative sentencing options.

This shift from the rehabilitative focus developed in the 1960's and 1970's to a more balanced system has created a need for enhanced communication between Federal agencies, the States, and local jurisdictions to gauge and monitor the impact of new laws and programs. It has also necessitated the development of a greater understanding of the factors and conditions that foster juvenile crime, especially violent juvenile crime. But, most urgently, it has created a need to understand where we are now. Without a clear picture of the current state of juvenile justice, the other two objectives would be all but impossible to meet.

Juvenile Justice Reform Initiatives in the States: 1994–1996, which identifies and analyzes issues and trends associated with State juvenile reform initiatives, represents an effort to fill that need. The report explains some of the more punitive measures, such as new criminal court transfer authority and expanded juvenile court sentencing options. However, many States have balanced these steps with enhanced resources and new programs designed to interrupt the development of youth violence and victimization. This document includes selected case studies of four States' implementation of such balanced initiatives.

It is my belief that this report will help crystallize the key issues facing juvenile justice practitioners and State-level policymakers concerned about the future of juvenile justice and help guide them in formulating future laws and policies in this important field.

Shay Bilchik
Administrator
Office of Juvenile Justice and Delinquency Prevention

Introduction

People across the country—from every racial, socioeconomic, and political sphere—are concerned about the increase in the number of crimes committed by juveniles. Policymakers are mobilizing to respond, in light of statistics that support this fear and indicate that the incidence of violent crimes committed by youth is intolerably high. This heightened concern and attention, coupled with an expected increase in the youth population over the next decade, have policymakers scrambling to find effective and affordable ways to prevent delinquency and to intervene with and sanction youth who commit crimes.

Juvenile Justice Reform Initiatives in the States: 1994–1996 is designed to provide timely information to policymakers on the mechanisms that States are using to respond to increased youth violence and delinquency. The report is broken down into four chapters that discuss in detail the juvenile crime and delinquency problem and highlight State responses to that challenge.

Chapter I, The Scope of Juvenile Violence, provides an overview of the incidence of youth crime in the Nation, discusses trends in violent juvenile crimes, considers how and why youth crimes are being committed, and gives a prognosis for the future. A full discussion of the statistics collected and reported on juvenile crime is provided, as is a discussion of the factors, such as firearms, gangs, and drug use, that are believed to be major contributors to this country's youth crime epidemic.

Chapter II, Issues and Trends in State Juvenile Justice Reform, highlights major issues and trends associated with recent State responses to youth crime in this country. This chapter addresses the following policy initiatives:

- Crime prevention.
- Curfews.
- Parental responsibility.
- Gang activities, including drug trafficking.
- Graduated sanctions.
- Juvenile boot camps.
- Youth and guns.
- Juvenile records.
- Juvenile waivers.
- Expanded sentencing authority.

Chapter III, Selected Case Studies of Juvenile Reform Initiatives, discusses in depth the reform initiatives in four States—Colorado, Connecticut, Ohio, and Oregon. Each case study describes in detail the elements of the State's reform initiatives based on interviews with officials in the State. Further, this chapter describes the relevant catalysts for changes to the administration of juvenile justice in each jurisdiction and the positions of opponents and proponents of the reform initiatives as they moved through the legislative process.

Finally, chapter IV, Observations Concerning State Juvenile Justice Reform, summarizes in general terms the juvenile justice reform trends that have been taking place around the country and includes observations and recommendations based on the experiences of States undertaking both single-issue and comprehensive juvenile justice reform.

Methodology, Uses, and Limitations

National Criminal Justice Association staff compiled information from a variety of sources for use in this report. The publications of other organizations; various journal, newsletter, magazine, and newspaper articles; and Federal Government publications constitute the major reference documents used in chapters I and II. This secondary research was complemented with primary source references, especially in the case of State code citations, when further explanation of a State program or policy was appropriate or necessary.

The case studies in chapter III represent original, primary source research. The case studies were completed by reviewing copies of reform legislation, obtaining relevant State-generated documentation about the various reform initiatives, and conducting telephone interviews with key players in each State's reform initiative.

This report targets State-level decisionmakers who are concerned with the issues surrounding juvenile justice reform from policy initiation through implementation. It should be viewed as a tool for lawmakers and policymakers who are searching for ways to help improve the administration of juvenile justice in their States. This report does not seek to evaluate, empirically or otherwise, existing programs but reports on what those programs are and, when available, recounts self-reporting on their impact on the incidence of youth crime.

Chapter I
The Scope of Juvenile Violence

Trends and Causes

Overview

The reality, fear, and consequences of juvenile violence continue to plague this Nation and drive legislative and political agendas at every level of government. More and more States are lowering the age at which juveniles can be waived or transferred to criminal court and enacting other measures to "get tough" with violent juvenile offenders. Meanwhile, prognosticators warn of a coming tide of juvenile violence, driven primarily by increased arrests of juveniles for serious and violent crime over the past 10 years and shifting demographics of age and race. These forecasts are based to some extent on the assumption that current trends are likely to continue.

Yet the hyperbole and alarm that surround much of the political posturing and new legislation obscure a simple fact: Very few juveniles engage in criminal acts, especially violent criminal acts. According to the U.S. Department of Justice, Federal Bureau of Investigation's (FBI's) Uniform Crime Report (UCR) data, about 6 percent of all juveniles were arrested for some offense in 1994—and of those arrested, about 7 percent were arrested for a violent crime. Therefore, less than one-half of 1 percent of juveniles in the Nation were arrested for a violent offense in 1994.[1]

However, as a number of studies have shown, juveniles commit a proportionately higher number of violent crimes than members of other age groups, and since the mid-1980's, juvenile offenders have become increasingly violent.[2] These findings are supported by comparisons of arrest statistics for adult and juvenile offenders. The number of individuals of all ages arrested for murder and negligent manslaughter increased approximately 23 percent between 1985 and 1994, while the number of juveniles arrested for those crimes in the same period grew by 150 percent.[3]

In 1991, the National Crime Victimization Survey (NCVS), which seeks information on crimes committed against persons age 12 or older, found that victims attributed about one in four personal crimes (crimes of violence and theft, including larceny) to juvenile offenders. Juveniles were reported to be responsible for about one in five violent crimes, and juveniles in groups were involved in about one in seven serious violent crimes.

A juvenile's chance of becoming a victim of violence or a violent offender is, to some extent, affected by race and geography. Data from the NCVS and the FBI's UCR indicate that African-American juveniles are more likely to be homicide victims and offenders than other racial and age groups. The rate of homicide victimizations for African-Americans was six times greater than for whites in 1994. According to the NCVS, African-American males had a rate of violent crime victimization in 1993 of 76 victimizations per every 1,000 persons, compared with the rate for white males of 59 victimizations per 1,000 persons.[4]

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1. Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, Juvenile Offenders and Victims: Update on Violence iv (1996) [hereinafter Update].

2. *Id.* at 14–15.

3. Federal Bureau of Investigation, U.S. Dep't of Justice, Crime in the United States: 1994, at 221 (1995) [hereinafter 1994 UCR].

4. Update, *supra* note 1, at 4.

While African-Americans constituted 12.5 percent of the population in 1994, they accounted for nearly 29 percent of the juvenile arrests and more than half of the arrests for violent crime, including 59 percent of the juvenile homicide arrests.[5]

The majority of juvenile offenders and victims are concentrated in large cities. FBI data show that more than half of the juvenile homicide arrests in 1994 occurred in six States—California, Florida, Illinois, Michigan, New York, and Texas—and just four cities—Chicago, Detroit, Los Angeles, and New York. These accounted for nearly one-third of all juvenile homicide arrests.[6] By contrast, approximately 8 out of every 10 counties in the Nation had no known juvenile homicide offenders in 1994.

What Caused the Increase?

Juveniles and Murder

While only a small minority of juveniles living in specific geographic areas are responsible for most of the juvenile violence in the Nation, there is no doubt that, on the whole, the problem of juvenile violence increased significantly in the past decade. What changed during the intervening years is what one noted researcher calls the "age-specific patterns for murder."[7] Basically, while the murder rates remained stable or declined among older people in the decade following 1985, they climbed for younger people. The number of juvenile homicide offenders doubled between 1980 and 1994. During this period, the juvenile responsibility for homicide in the country grew, based on FBI clearance statistics, from 5 percent to 10 percent of all homicides in the United States.[8]

Anatomy of Violence

The increase in juvenile violence began in 1985 as the use of cocaine in inner cities began to reach epidemic proportions. According to Alfred Blumstein, the J. Erik Johnson University Professor of Urban Systems and Operations Research at Carnegie Mellon University (Pennsylvania) and director of the National Consortium on Violence Research, the increase was the result of the interrelationship—or "deadly nexus"—of several factors: drugs, guns, and juveniles.

Under Blumstein's theory, the expansion of the crack cocaine market led to drug traffickers recruiting children and teenagers as low-level sellers, carriers, and lookouts. Juveniles were recruited partly because they worked for less, took greater chances, and were more likely to escape detection and punishment.

Juveniles involved in drug trafficking carried guns because they were unable to rely on police for protection. As more juveniles were recruited by drug traffickers, firearms proliferated among inner-city gangs engaged in turf and drug market battles. This in turn persuaded other juveniles, who may not have been involved with the drug industry, to carry guns for self-protection and also as a status symbol.

Thus, as more guns appeared in the community, the incentive for individuals to arm themselves increased, creating what Blumstein refers to as a "local arms race."[9]

Data on the number of firearm-related homicides appear to support Blumstein's theory. In 1976, less than two-thirds of juvenile homicide offenders used a gun; by 1991, more than three-quarters killed with a gun;[10] in 1994, 82 percent used a gun.[11] Since 1980, the murder arrest rate has declined slightly for adults and increased markedly for juveniles, regardless of race. But between 1985 and 1992, the drug

5. Bureau of Justice Statistics, U.S. Dep't of Justice, Sourcebook of Criminal Justice Statistics 1995, 409 (1996).

6. National Center on Institutions and Alternatives, Center on Juvenile and Criminal Justice, An Analysis of Juvenile Homicides: Where They Occur and the Effectiveness of Adult Court Intervention 1 (July 1996).

7. Alfred Blumstein, *Violence by Young People: Why the Deadly Nexus?*, U.S. Dep't of Justice National Institute of Justice Journal, Aug. 1995, at 3.

8. Update, *supra* note 1, at 18.

9. Blumstein, *supra* note 7, at 6.

10. Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, Juvenile Offenders and Victims: A Focus on Violence iv (1995).

11. Update, *supra* note 1, at 24.

arrest rate for juveniles climbed only for nonwhites.[12] Blumstein offers a simple explanation for this disparity:

> . . . [T]he apparent absence of significant involvement of white juveniles in the drug markets during this time has not insulated them from the growth of their involvement in homicide, possibly through the suggested process of the diffusion of guns from drug sellers into the larger community. When the arrest trends of young nonwhites for homicide and drug offenses are compared, it is evident that both rates climbed together from 1985 to 1989, suggesting the relationship between the two. The drug arrest rate declined somewhat after 1989. There was a flattening out, but no corresponding decline, in the murder arrest rate. In other words, the continued high rate of murder arrests seems to demonstrate that, once guns are diffused into the community, they are much more difficult to purge.

Only by stopping the "diffusion" of firearms, Blumstein says, will the Nation lower the incidence of violent crime committed by juveniles.

Juveniles and Firearms: A Closer Look

For many juveniles, firearms have become a fact of life. For juvenile offenders, guns have become as common as knives once were. Consider that:

- The juvenile arrest rate for weapons laws violations increased by 103 percent between 1983 and 1994; during the same period, the adult arrest rate increased 26 percent.[13]
- In a recent study of 4,000 arrestees in 11 cities, 40 percent of juvenile males reported possessing a firearm at some time.[14]
- A Virginia Department of Criminal Justice study of adult and juvenile inmates found that juveniles were more likely than adults to have carried a semiautomatic pistol in the commission of a crime.[15]
- In 1994, the National School Safety Center estimated that each day about 135,000 students nationwide carried guns into schools.
- A 1991 study of a sample of juvenile inmates in four States found that, in particular, juvenile offenders prefer high-quality, large-caliber, concealable handguns.[16]

Juveniles increasingly are the victims of firearms-related violence. The U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (ATF) reported that more U.S. teenagers die from gunshot wounds than from all natural causes of disease combined.[17] In a June 1993 fact sheet, the U.S. Department of Health and Human Services' Centers for Disease Control and Prevention reported that firearms are the second leading cause of death for young people 10 to 34 years of age.[18] In 1991, the ATF reported that firearms-related mortality accounted for almost half of all deaths among teens; in 1993, 85 percent of 15- to 19-year-old murder victims were killed with a firearm.[19]

Where Juveniles Get Guns

In November 1993, the ATF initiated a tracing program to identify the source of firearms recovered from juvenile offenders. When doing followup investigations, the ATF's tracing program also seeks to determine in which criminal activities firearms were

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12. Blumstein, *supra* note 7, at 7, 8.

13. UPDATE, *supra* note 1, at 21.

14. *Id.*

15. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, GUNS USED IN CRIME 5 (July 1995).

16. *Id.*

17. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, U.S. DEP'T OF THE TREASURY, THE ATF JUVENILE FIREARMS INFORMATION 2 (1995) [hereinafter ATF].

18. NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL, CENTERS FOR DISEASE CONTROL AND PREVENTION, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, FACT SHEET: FIREARMS INJURIES AND FATALITIES (June 1993).

19. ATF, *supra* note 17, at 2.

used and to discover how the juveniles obtained the firearms. Traces are initiated at the request of law enforcement agencies.

In 1993 and 1994, the ATF conducted more than 3,800 traces of firearms recovered from juveniles. In most cases, juveniles were charged with weapons offenses, such as illegal possession of a firearm.[20] Of the total firearms recovered, 2,700 were involved in incidents that resulted in charges of weapons violations.[21] The ATF also found that 205 of these weapons were used in assaults, 199 in homicides, 156 in incidents involving narcotics, 98 in robberies, 46 in burglaries, and 13 in sexual assaults.[22]

In 712 followup trace investigations conducted from November 1993 through June 1994 to determine the source of firearms recovered from juveniles, the ATF found that 27 percent of the juveniles had been given firearms by individuals other than parents or guardians and 22 percent had obtained firearms in burglaries or other thefts.[23] The investigations also found that 16 percent of the juveniles had purchased their firearms on the street and 15 percent had taken firearms from their homes.[24] The ATF was unable to determine how juveniles secured firearms in the remaining 20 percent of the traces.

Juveniles who commit violent crimes involving firearms frequently use stolen guns. The ATF found that 32 percent of firearms used by juveniles in committing violent crimes were taken in burglaries and other thefts, 25 percent were obtained by juveniles from persons other than parents or guardians, and 21 percent were purchased on the street.[25]

Prognosis for the Future

Until recently, the prognosis for greater levels of juvenile violence was bleak. The report *Juvenile Offenders and Victims: A Focus on Violence*, published in May 1995, concluded that "[i]f violent juvenile crime increased in the future as it has for the past 10 years . . . by the year 2010 the number of juvenile arrests for violent crime will more than double and the number of juvenile arrests for murder will increase nearly 150 percent."

However, more recent data provided by the FBI show that the level of juvenile crime and violence appears to be leveling off, if not falling. The juvenile murder arrest rate, which increased 169 percent between 1983 and the end of 1993, has decreased 23 percent since 1993 and dropped 14 percent in 1995 alone.[26] The juvenile violent crime arrest rate decreased 4 percent in 1995, with the greatest decline occurring among juveniles ages 10 to 14.

Observers hailed the new statistics as proof that anti-violence and crime prevention efforts by the administration, law enforcement, schools, and community groups finally were paying off. Other observers concluded that the most violent group of juveniles from the 1980's crack cocaine trade had matured into less violent adults in their twenties.[27] Blumstein said that efforts to get guns out of the hands of young people in some of the crime-heavy cities, such as New York and Boston, were having a noticeable effect.

While policymakers might consider the latest figures as cause for cautious optimism, criminal justice prognosticators are warning that the downturn could merely be a lull before the next storm of juvenile violence. Two of the most vocal espousers of this theory are John J. DiIulio, Jr., a professor of politics and public affairs at Princeton University (New Jersey), and James Alan Fox, a professor in the College of Criminal Justice at Northeastern University (Massachusetts). They argue that while a slight downturn in juvenile violence is inevitable, the Nation, in Fox's words, is "on the verge of another crime wave that will last well into the next century."[28]

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20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* at 3.

26. Press Release by U.S. Dep't of Justice (Dec. 12, 1996) (on file with author).

27. Fox Butterfield, *After 10 Years, Juvenile Crime Begins to Drop*, N.Y. TIMES, Aug. 9, 1996, at A1.

28. James Alan Fox, Presentation at National Criminal Justice Association Annual Meeting (May 30, 1996); see Fox Butterfield, *Crime Continues to Decline, But Experts Warn of Coming 'Storm' of Juvenile Violence*, N.Y. TIMES, Nov. 19, 1995, at A1.

Fox states that the level of adult violence has tapered off as baby boomers have aged and "curbed their violent ways" or engaged in "profit-driven crime." Between 1980 and 1985, the homicide rate dropped nationally by approximately 25 percent. At the time, he had assumed that "all else would be equal" and the homicide rate would keep dropping until the end of the 1980's. However, increases in drug trafficking and related handgun violence pushed up the homicide rate among young people by 22 percent during the second half of the 1980's.

"The murder rate is down now only because the homicide rate among adults is overshadowing that of teenagers," Fox said. He also stated that the homicide rate among African-American teenagers is 10 times that of white teenagers. "Too many children are coming out undersocialized and undersupervised," he said. "They have too much free time on their hands. Literally time to kill."

Fox warned that a "baby boomerang" is likely to increase violent crime and drug abuse rates as the Nation enters the next millennium. The boomerang cohort in question is the generation of children born to the baby boomers—loosely defined as the post-World War II generation that grew up during the 1950's and 1960's.

Currently, there are 39 million children under the age of 10 in the Nation.[29] By the year 2005, the number of teens between the ages of 14 and 17 will swell 14 percent, and the number of African-American teens will grow by 17 percent. Teenagers are part of the "prime crime age group" and "given the trends, we may face a bloodbath that makes the 1990's look like the good old days," Fox said.

According to Fox, political leaders must act now to avert the coming crime wave by reinvesting in schools, afterschool care, and family support activities.

A Dissenting Voice

Dire predictions of a coming wave of juvenile violence are of little value because they are based on faulty assumptions and incomplete data, a California law professor believes. Franklin E. Zimring, the William G. Simon Professor of Law and director of the Earl Warren Legal Institute at the University of California at Berkeley School of Law, has contended that "[u]sing demographic statistics to project how many kids are going to commit homicide [has] extremely limited utility."[30]

Generally, "homicides by kids are not well observed by the data," he said. "The data focus only on youth arrests, not on total incidents, victims, or perpetrators. The overall incidence of homicide, which is variable and cyclical, is still a much better predictor of future violence than assumptions based on demographic shifts." Moreover, Zimring said, Fox and DiIulio are basing their predictions on an assumption that a certain percentage of youth will become criminal offenders. In an essay published by the *Los Angeles Times*, Zimring writes:

> When asked the basis for [his prediction], DiIulio points to studies that have shown about 6 percent of all boys are responsible for about half of all the police contacts with minors. In the most important study in Philadelphia, boys in this 6 percent were classified as chronic delinquents because they had five or more police contacts for any cause. Some of these Philadelphia kids had committed violent acts; many had not. In other studies set in smaller cities, almost no life-threatening violence showed up in the youth samples that were responsible for the majority of all police contacts . . . . No study of any youth population supports [DiIulio's] projection of predatory violence.[31]

Though only time will tell whether DiIulio and Fox's predictions will become a reality, juvenile violence has been and continues to be a major concern for policymakers at every level of government. Even with the recent leveling in violent juvenile arrests, the dimensions of the problem are far greater than they were a decade ago.

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29. DiIulio has put the figure at 40 million. Butterfield, *supra* note 27.

30. Franklin E. Zimring, Presentation at National Criminal Justice Association Annual Meeting (May 30, 1996).

31. Franklin E. Zimring, *Crying Wolf Over Teen Demons*, L.A. TIMES, Aug. 19, 1996, at A17.

Chapter II
Issues and Trends in State Juvenile Justice Reform

Introduction

States have responded with increasing urgency to the problems presented by violent youth behavior. Nearly every State in the past 2 years has enacted legislation changing the way juvenile justice is implemented. From programs that help prevent a child's misbehavior from evolving to more delinquent and violent acts to those that allow juveniles to be tried and sentenced in adult criminal court, States have responded in a variety of ways to the challenges inherent in combating youth crime.

Presented here are juvenile justice initiatives that have been undertaken by many States in the past few years. They are discussed in an order that lends itself to the notion of providing a continuum of services to high-risk delinquent youth or responding to juvenile delinquency with sanctions that are both immediate and reflective of the nature of the crime committed. The topics are juvenile crime prevention, curfews, combating youth gangs, parental responsibility laws, juvenile boot camps, youth and guns, opening juvenile records and proceedings, juvenile transfer to criminal court, and expanded sentencing authority.

It should be noted that although this report focuses primarily on State-level responses to juvenile crime, some consideration of local measures to address youth violence (both as offender and victim) and delinquency is presented. A discussion of curfew laws is included, for example, even though curfew restrictions are overwhelmingly imposed by local jurisdictions, because of the number of localities that have enacted curfew ordinances in an effort to preserve public safety. Further, local responses to juvenile crime are presented in the gang section when describing multijurisdictional collaboration to combat gang violence and in the parental responsibility section when discussing local laws that hold parents criminally responsible for their children's misconduct and delinquent behavior.

Prevention

Delinquency prevention efforts are considered by many to be crucial to the development of a consistent and comprehensive approach to the problem of youth crime and delinquency. Traditionally, evaluations have lacked empirical support of prevention programs' impact on juvenile misconduct. Today, however, a growing body of research supports the idea of delinquency prevention as both a practical and cost-effective means of reducing youth misbehavior. Even so, policymakers continue to debate the efficacy of these "front end" programs that claim to avert crime, as opposed to "get tough" sanctions that purportedly deter youth violence and delinquency.

Delinquency prevention efforts are broad based, and their impact sometimes is difficult to gauge precisely. They touch on almost every aspect of public policy that addresses children's issues, including programs traditionally associated with education, housing, law enforcement, or health and human services-related agencies. Programs that are preventive in nature can focus on children of any age. Other programs may concentrate on the parents of these children or on the communities in which they live.

Current discussions centered on juvenile crime prevention focus on several key components in an effort to define what programs are most effective in discouraging youth misbehavior. The first relates to the notion of providing a continuum of services to youth at different stages of the child welfare and juvenile justice systems, providing both assistance and sanctions appropriate to individual children in individual

situations. According to the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), the need for intervention may arise long before a child's initial contact with the juvenile justice system. For example, families and schools should respond immediately when a youth starts to misbehave at school or if his or her grades begin to suffer. It is hoped that immediate intervention will help remedy antisocial behaviors before they become more disruptive, criminal, or violent in nature.[32] According to a recent report on State-level juvenile justice policies by the National Conference of State Legislatures (NCSL), "Research shows that youths commit the most serious delinquent acts during their teen years and early adulthood, and that the earlier a juvenile commits a violent offense, the more likely he or she will commit crimes as an adult. But other less serious infractions—such as shoplifting, running away, staying out late, sexual promiscuity, and vandalism—occur much earlier and frequently are predictive of future patterns of delinquent behavior."[33]

These immediate intervention efforts involve all of the core institutions that contribute to a youth's environment, according to a recent report by the President's Crime Prevention Council (PCPC). Efforts to curb youth violence should be inclusive of the various stakeholders living with the problems or charged with finding solutions to youth crime. "These stakeholders include families, neighborhood committees, businesses, landlords, law enforcement agencies, public and private health and human services providers, educators, and state and local government," according to the 1995 PCPC report. "Mobilizing communities—including youth—and developing stronger ties between community residents, service providers, and law enforcement officials have proven to be critical components of crime prevention."[34]

These ideas of community inclusion and a swift, appropriate response to juvenile misbehavior through a strong network of organizations, agencies, and individuals may sound appealing to those interested in a comprehensive approach to the administration of juvenile justice. However, few States or localities have the resources to tackle all aspects of youth violence and crime prevention at once. For example, a recent article from *The Compiler*, the Illinois Criminal Justice Information Authority's publication, describes the challenges of providing appropriate services to the youth who need them in that State: "While there are several options available in Illinois for youthful offenders, ranging from station adjustments to incarceration at the Illinois Department of Corrections' Juvenile Division, there is no consistent range of services available to all youth in the State." According to the article, "Illinois is not alone in struggling to find the optimum combination of punishment, rehabilitation, and prevention programs that will prevent juveniles from reoffending—or even from committing a crime in the first place."[35]

The PCPC recommends that States and localities searching for the correct balance of services for troubled youth target their efforts based on the types of programs that currently exist in a jurisdiction, adding programs that have been shown to have a positive impact on youth misconduct. However, what population to target, when, and with what type of prevention mechanism or alternative sanction are critical planning questions for policymakers.[36]

What Works?

More and more research indicates that juvenile crime and delinquency prevention programs not only have a positive impact on troubled youth, but are a good investment when compared with the costs associated with the behavior of serious, violent,

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32. Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders 8 (James C. Howell ed., June 1995) [hereinafter Howell Guide].

33. National Conference of State Legislatures, A Legislator's Guide to Comprehensive Juvenile Justice, Interventions for Youth at Risk (1996) [hereinafter NCSL Legislator's Guide].

34. The President's Crime Prevention Council, Preventing Crime and Promoting Responsibility: 50 Programs that Help Communities Help Their Youth 4 (Sept. 1995).

35. *Intervention and Prevention: What's Available?*, The Compiler (Illinois Criminal Justice Information Authority, Chicago, Ill.), Summer 1996, at 14.

36. *Id.* at 5.

and chronic juvenile offenders. A recent literature review identified prevention programs that provide positive influences in the lives of youth who misbehave or act out. Evaluations and assessments of these programs varied in design, making a ranking or comparison of their efficacy impossible. However, OJJDP was able to identify several programs that were proven effective through empirical evaluations and several that were potentially promising based on less rigorous research designs.

Programs that consistently demonstrated positive effects on youth at risk of developing delinquent behavior include those that strengthen the institutions of school and family in the life of the youth, such as smaller class sizes in early years of education; tutoring and cooperative learning; classroom behavior management, behavioral monitoring, and reinforcement of school attendance, progress, and behavior; parent training and family counseling; and youth employment and vocational training programs.[37]

Programs considered promising include conflict resolution and violence prevention curriculums in schools; peer mediation; mentoring relationships; community service for delinquent youth; restrictions on the sale, purchase, and possession of guns; and intensified motorized patrol and community policing.[38]

Traditionally, policymakers have found it difficult to support programs that are not guaranteed to produce a definitive result—unlike incarceration, for example—when public concern about crime and safety is high. "In State capitols as well, it's difficult to support expenditures that might reduce crime and prison costs in years to come when voters are clamoring for action now," according to a recent article on youth crime prevention initiatives in *State Legislatures* magazine.[39] However, research as early as a 1984 study conducted by Vanderbilt University indicates that it is worth making an investment in front-end programs. The university's analysis of various Los Angeles County delinquency prevention programs indicated that prevention saved $1.40 for every $1 invested.[40]

The RAND Corporation released a study in June 1996 that supported Vanderbilt University's results. The study, titled *Diverting Children from a Life of Crime: Measuring the Costs and Benefits*, found that programs aimed at helping juvenile offenders before they become repeat felons may be a more cost-effective approach to reducing crime than the "three-strikes-and-you're-out" sentencing laws that have become so popular in recent years.

Working under the assumption that juvenile delinquency and behavioral problems are strongly linked to criminality later in life, RAND studied programs intended to prevent or help resolve earlier youth misconduct while simultaneously avoiding the costs of adjudicating and imprisoning some offenders later. For the report, RAND researchers examined pilot programs in four selected categories and evaluated their success in deterring crime among juveniles and adults, the short- and long-term impacts of the pilot programs, and their cost effectiveness. Four kinds of programs were under consideration, including programs in which (1) child care professionals visit children under the age of 3 at home, followed by 4 years of sponsored daycare and guidance to parents to prevent abuse and neglect; (2) parents of school children beginning to show signs of aggression and behavioral problems are trained; (3) cash and other incentives are offered for disadvantaged high schoolers to complete their diplomas; and (4) high school students who have already exhibited delinquent behavior are monitored and supervised.

Relatively small programs and limited data form much of the basis of the report's comparisons, the RAND Corporation notes, but the study's findings are significant enough to warrant further, more extensive trials. The authors attempted to compensate for problems with the data by using conservative estimates and factoring in expenses for applying programs on a larger scale than previously attempted.

For purposes of comparison, the report calculated the average cost of each program per serious crime prevented, then tallied the number of serious crimes

37. HOWELL GUIDE, *supra* note 32, at 127–128.

38. *Id.* at 128.

39. *Ounce of Prevention*, STATE LEGISLATURES (National Conference of State Legislatures, Denver, Colo.), May 1995, at 14–16.

40. *Id.*

prevented per $1 million spent. Some 60 crimes were prevented annually per $1 million spent on three-strikes laws, compared with the estimated 258 crimes prevented per $1 million spent on graduation incentives and the estimated 157 crimes prevented if the same amount were invested in parent training. The report also suggested that 72 crimes could be prevented for each $1 million spent annually on supervision of delinquents. Because of its high cost, the home visits and daycare program was estimated to prevent just 11 crimes annually per $1 million spent.

The report predicted that three-strikes laws would reduce serious crime by 21 percent at a cost of $5.5 billion annually if fully implemented. Another 22-percent reduction in serious crime could theoretically be reached through graduated incentives and parent training at an additional annual cost of less than $1 billion. The programs have not been tested in combination with each other and with three-strikes laws, and the cost-efficiency analyses are based on "crude approximations," according to the authors. But the report recommended a test of the three programs—graduated incentives, parent training, and supervision of delinquents—in combination to see if its prediction holds up.[41]

Recent State Action

State initiatives indicate policymakers consider prevention efforts important components of successful juvenile justice systems. Two themes emerge when considering recent crime prevention enactments: promoting a community-based, public-/private-sector response to juvenile delinquency, often with unique sources of funding and support, and utilizing school-based programs and activities in the development and implementation of youth violence prevention initiatives.

The Illinois Violence Prevention Act of 1995 created the Illinois Violence Prevention Authority to coordinate statewide violence prevention efforts, raise funds for State and community organizations that address violence prevention in a comprehensive and collaborative manner, and provide technical assistance and training to help build the capacity of communities, organizations, and systems to develop, implement, and evaluate violence prevention initiatives.[42] The act also created a Violence Prevention Fund, consisting of appropriations and grants from Federal, State, or private sources set aside specifically for violence prevention. In addition, the act established a unique funding source for violence prevention efforts—revenue from the issuance of violence prevention license plates. Of the $40 the State charges for the license plates, $25 will be deposited into the Violence Prevention Fund. For each renewal, the State charges $27, of which $25 will be deposited into the fund.[43]

Comprehensive juvenile justice reform in Missouri and Oregon created tax incentives for individuals and organizations to become involved in the youth crime and delinquency prevention effort. The State of Missouri enacted the Youth Opportunities and Violence Prevention Act, which provides a tax credit for individuals and corporations that make monetary or physical contributions to public or private initiatives that establish, implement, or expand various education and employment programs for youth. Examples of these programs include those that encourage school dropouts to reenroll in school, employment and internship programs targeting youth living in poverty and high-crime areas, mentoring and role model programs, drug and alcohol abuse prevention training, conflict resolution and mediation programs, and youth outreach and counseling.[44] The Oregon initiative, the First Break Program, gives tax incentives to employers that hire juveniles at risk for delinquent behavior. Youth qualified for participation are those who are certified by various community-based organizations to be prone to becoming gang involved or gang affected.[45]

School-based initiatives to fight delinquency have also become popular in recent legislative sessions. A Mississippi measure seeks to facilitate collaboration among schools, families, and local agencies involved

41. *Three Strikes Laws Used Rarely; Effectiveness in Doubt*, JUSTICE BULLETIN (National Criminal Justice Association, Washington, D.C.), Dec. 1996 (citing Peter Greenwood et al., THE RAND CORPORATION, DIVERTING CHILDREN FROM A LIFE OF CRIME: MEASURING COSTS AND BENEFITS (1996)).

42. 20 ILL. REV. STAT. 4027/15 (West Supp. 1996).

43. 625 ILL. REV. STAT. 5/3–629 (West Supp. 1996).

44. MO. REV. STAT. § 135.460 (Supp. 1996).

45. OR. REV. STAT. § 315.259 (Supp. 1996).

in youth development activities and to provide a cost-effective response to youth misbehavior before it escalates and warrants more expensive crisis intervention. The Save Our Students (SOS) program was created to award grants to community-based organizations to provide afterschool mentoring and activities for school-aged youth. The primary goals of the SOS program are reducing juvenile crime; improving the attitudes, behavior, and academic performance of youth; and improving coordination of existing resources to provide services to youth effectively and efficiently. The statute defines specifically the requirements that qualified community-based organizations must adhere to in qualifying for funds under this State Department of Education-administered program.[46]

Other initiatives that focus on providing positive activities for youth have been undertaken by a number of States and localities and have shown positive results. The development and implementation of a late-night basketball program developed recently throughout the State of Maryland was associated with a 60-percent drop in drug-related crime. When funding shortages limited the recreational programs available to youth in Phoenix, Arizona, the incidence of juvenile crime decreased on evenings that activities, such as youth basketball, were available and went up on nonactivity evenings.[47]

Strengthening and enforcing age-old compulsory school attendance laws are other ways States are trying to prevent delinquent behavior that occurs when children skip school. A Rhode Island initiative allows parents of truant youth to be fined $50 per absent day, with a possible $500 fine and a 6-month prison term if the youth's truancy exceeds 30 school days during the academic year.

Curfew

Curfews have reemerged recently as a popular option for policymakers in their efforts to deter juvenile victimization and delinquency. Imposed on and off since the turn of the century, curfews tend to receive increased attention when there is a perceived need for more stringent efforts at social control. For example, curfew ordinances were originally enacted in the 1890's to decrease crime among immigrant youth. During World War II, curfews were perceived as an effective control for parents who were busy helping with the war effort. More recent interest in juvenile curfew ordinances came as a response to growing juvenile crime during the 1970's.[48]

Many States have laws enabling localities to enact curfew ordinances, with Georgia, Minnesota, Ohio, Tennessee, and Texas recently enacting laws of this sort, according to NCSL.[49] Only Hawaii has enacted statewide curfew legislation. Both California and Florida have debated the idea of adopting statewide curfew legislation, but neither State has enacted any legislation to that end.

Traditionally under the jurisdiction of local governments, curfews are commonplace in cities and towns across America, according to the U.S. Conference of Mayors. In a December 1995 survey of 1,000 cities with populations of more than 30,000, the conference found that 70 percent, or 270 of the 387 cities responding, have a curfew ordinance in place. An additional 6 percent, or 23 cities, were considering adopting curfew legislation, according to the survey.[50] Cities that have enacted new curfew ordinances or have amended existing curfew legislation since 1994 include Arlington, VA; Austin, TX; Baltimore, MD; Buffalo, NY; Phoenix, AZ; Oklahoma City, OK; and San Jose, CA.[51]

Curfew laws vary with respect to the locale affected, timeframe, and sanctions. Most restrict minors to their homes or property between the hours of 11 p.m. and 6 a.m., with some jurisdictions allowing exceptions for weekend nights or summer months. Many curfew ordinances provide exemptions for youth who are going to or from a school-, religious-, or civic-sponsored event. Youth traveling from

46. MISS. CODE ANN. § 37–3–85 (Supp. 1996).

47. *Misunderstood Youth*, ECONOMIST, Sept. 21, 1996, at 26.

48. Tamara Henry, *Curfews Attempt to Curb Teen Crime*, USA TODAY, Apr. 5, 1995.

49. NCSL LEGISLATOR'S GUIDE, *supra* note 33.

50. *Cities with Curfews Trying to Meet Constitutional Test*, WASH. POST, Dec. 26, 1995.

51. William Ruefle & Kenneth Mike Reynolds, *Curfews and Delinquency in Major American Cities*, 41 CRIME & DELINQUENCY 347, 355–358 (July 1995).

places of employment or responding to emergencies often are excluded from curfew provisions as well. Several ordinances allow unrestricted mobility for youth who are married, accompanied by an adult, or traveling with a parent's permission.

In addition, some curfew laws impose more stringent curfew parameters in specific zones of the city, usually in targeted high-crime or commercially important areas. A recent example of this type comes from the city of Austin where, in 1994, the city council took action to limit youth activity in the nightclub district of the city. In that area, the curfew begins at 10 p.m. each night, compared with the 11:30 p.m. curfew for the rest of Austin.[52]

Enforcement efforts also differ from city to city. William Ruefle, then of the University of South Alabama, and Kenneth Mike Reynolds, of the University of New Orleans, found in a recent literature review and survey of existing curfew ordinances that curfew enforcement initiatives are implemented through regular law enforcement and special policing units. The 1994 survey, which polled 77 U.S. police departments in cities with populations of 200,000 or more, indicates that 71 percent of the cities with curfew ordinances used regular law enforcement personnel and resources to implement the cities' curfew initiatives. The remaining police departments frequently used additional personnel to augment regular enforcement, according to the survey. These added officers contributed to periodic sweeps or "zero tolerance" crackdown efforts in which law enforcement personnel were pulled from other assignments for short periods to strongly enforce a curfew ordinance.[53]

Sanctions for curfew violations, which are status offenses for juveniles, also may vary among jurisdictions. Offenders can be fined from $50 to several hundred dollars or charged with a misdemeanor. Some ordinances include a parental accountability provision, under which parents can be held partially or fully responsible for children's curfew violations. Sanctions against parents may include participation in diversion programs, fines, and, in some jurisdictions, jail time. For example, the 1994 curfew ordinance in Denver, CO, does not mandate a fine be levied against parents whose children violate the city's curfew ordinance. Rather, the law provides for the assessment of a fine only if the youth and their parents fail to participate in a court-assigned diversion program.[54]

Pros and Cons

The stated goal of most curfew laws is twofold: to prevent juvenile crime and to protect youth from victimization. According to the Ruefle and Reynolds analysis, those who support juvenile curfews indicate that neighborhoods afflicted with high rates of crime may use curfews as a "means to protect nondelinquent youth from crime and to deny delinquent youth the opportunity to engage in criminal behavior."[55] By keeping youth under the age of 18 off the street, curfews are expected to reduce the incidence of crime among the cohort most likely to offend, according to the Federal Bureau of Investigation's (FBI's) 1994 Uniform Crime Report (UCR).[56] Since juvenile perpetrators of crime often take as their victims other youth, it is hoped that rates of youth victimization will drop as well.

Curfews are credited by some with restoring and maintaining order in lower crime neighborhoods, according to the Ruefle and Reynolds analysis. In addition to equipping law enforcement with tools to keep youth off the streets, curfews provide parents with a legitimate, legal basis for restricting the activities of their children. It is easier for parents to place boundaries on their children's activities, proponents argue, when other youth in the neighborhood are similarly restricted by a specific time to return home.[57]

Critics of curfew ordinances oppose these initiatives on both practical and legal grounds. According to the National Council on Crime and Delinquency

52. *Id.* at 358.

53. *Id.*

54. Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, Juvenile Justice Bulletin, Curfew: An Answer to Juvenile Delinquency and Victimization 4 (April 1996) [hereinafter Curfew].

55. *Id.* at 349.

56. 1994 UCR, *supra* note 3, at 221.

57. Ruefle & Reynolds, *supra* note 51, at 348.

(NCCD), curfew enforcement is often ineffective and unnecessarily funnels large numbers of nondelinquent youth into a criminal justice system that is already inundated with alleged offenders.[58] In addition, some opponents cite a dearth of empirical evidence supporting the efficacy of curfew legislation. According to the literature review conducted by Ruefle and Reynolds, little or no recent empirical evidence indicates that curfew initiatives have an effect on juvenile crime, nor has research addressed the impact of curfews and their enforcement on the criminal justice system as a whole.[59]

The one outcome evaluation uncovered by Ruefle and Reynolds described the efficacy of a Detroit, MI, curfew ordinance evaluated during the summer of 1976. The before-and-after comparison of youth gangs indicated that the presence of a curfew seemed to reduce or suppress crime levels effectively during curfew hours. However, the authors note that this diminished incidence of youth misbehavior while under curfew was accompanied by an observable increase in criminal activity between 2 and 4 p.m. Thus, it appears as if youth misconduct was merely displaced to time periods when the curfew ordinance was not in effect.[60]

Additional criticisms come from other groups, like the American Civil Liberties Union (ACLU), who argue that curfew measures violate the constitutional rights of children and parents. Legal challenges to the constitutionality of curfew laws are most often based on the 1st, 4th, 9th, and 14th amendments to the U.S. Constitution, according to a recent report by OJJDP. Opponents of curfew ordinances are concerned with the restrictive nature of these laws and the limitations on a youth's first amendment right to free speech and association. Others argue that curfews give law enforcement excessive power to detain children without probable cause and subject them to police questioning in violation of the fourth amendment's guarantees against unreasonable search and seizure. Additional legal challenges to curfew laws have been based on the ninth amendment, which has been interpreted as providing a privacy right applicable to parents rearing children. Yet other critics argue that curfews violate the equal protection clause of the 14th amendment by establishing a suspect classification based solely on the age of a group of individuals.[61] Some groups, like NCCD, fear that this classification may result in a disparate enforcement of curfew initiatives, to the detriment of minority youth.[62] Further, some court cases have struck down curfew laws because they are vague and overreaching, not because they violate fundamental rights.

Judicial Interpretation of the Constitutionality of Curfews

U.S. district and appellate court decisions indicate that the critical issue in cases challenging curfew ordinances may be maintaining the intricate balance between the government's interest in protecting public safety and ensuring the mobility rights of youth. A recent case in Texas illustrates this problem. In May 1994, the U.S. Supreme Court refused to hear an appeal of a case, *Qutb* v. *Bartlett*, in which the U.S. Court of Appeals for the Fifth Circuit upheld a Dallas, TX, curfew ordinance. The refusal to hear the case allowed the Fifth Circuit's decision to stand.

The ordinance, adopted by the city in June 1991, prohibits persons under the age of 17 from being present in a public place or establishment between 11 p.m. and 6 a.m. on weeknights and between midnight and 6 a.m. on weekends. The law does not apply if the juvenile is traveling to or from work, church, or a civic event; if the juvenile is accompanied by a parent or guardian; if there is an emergency; if the juvenile is running an errand for a parent or guardian; or if the juvenile is on the sidewalk in front of his or her home. The maximum penalty for violating the ordinance is a $500 fine. The minor's parent also may be fined if he or she allows a minor to remain in any public place during the curfew.

In *Qutb* v. *Bartlett*, a mother and daughter challenged the ordinance on the grounds that the ordinance unconstitutionally infringed upon a youth's right to

58. *Id.* at 347.

59. *Id.* at 350.

60. *Id.* at 351.

61. CURFEW, *supra* note 54, at 7.

62. Ruefle & Reynolds, *supra* note 51, at 347.

mobility and free association and a parent's fundamental privacy interest in choosing how children are to be raised.

The Federal district court ruled in favor of the Qutbs. However, the Fifth Circuit reversed, ruling that an ordinance may be constitutional, even when it infringes upon a fundamental right, if it promotes a compelling governmental interest and if no less restrictive way exists to achieve the State's objective. The court held that the Dallas City Council proved its compelling interest in reducing juvenile crime by providing statistical findings that showed the incidence of youth misconduct in the city. The data provided demographic information about the prevalence of juvenile delinquency, the incidence of specific crimes, and the times of day and locations at which most violent juvenile crimes were committed. This effort, combined with the numerous exceptions written in the ordinance, indicated to the court the council's intent of limiting youth crime and victimization in the least restrictive manner possible. The court concluded that "the ordinance presents only a minimal intrusion into the parents' rights" because of the broad exemptions.[63]

The Court's refusal to hear an appeal in the *Qutb* case does not guarantee protection against future challenges to curfews on constitutional or nonconstitutional grounds. However, a more recent ruling out of the U.S. District Court for the Southern District of California upheld that city's more stringent curfew legislation based upon the *Qutb* precedent. In March 1995, ACLU filed a suit in San Diego Federal court challenging the city's juvenile curfew ordinance on the grounds that it unreasonably restricted the mobility of youth in the city. The ACLU suit came in response to 6 months of aggressive enforcement of the curfew legislation in late 1994. From June to November of that year, 2,300 young people were arrested for curfew violations, an increase from the 1,000 charged with a violation during that same period in 1993.[64]

The Federal district court upheld the 10 p.m. curfew ordinance in December 1995. According to the court, the city has a legal right to impose ordinances meant to "promote the moral, social, and physical welfare of minors" by keeping them off the streets.[65] At the time of this writing, ACLU was appealing the judgment.

An October 1996 decision handed down by the U.S. District Court for the District of Columbia illustrates the significance of obtaining relevant data to support the position that a curfew ordinance fulfills a public safety need. In *Hutchins* v. *District of Columbia,*[66] a group of minors, parents, and a commercial establishment sued the District of Columbia to restrain the city from enforcing its Juvenile Curfew Act of 1995. Under the law, minors under the age of 17 could not be in any public place or on the premises of any establishment, with certain exceptions, in the District of Columbia, on Sunday through Thursday between 11 p.m. and 6 a.m. and between midnight and 6 a.m. on weekends and during the summer.

None of the plaintiffs who commenced the action were prosecuted under the curfew law, but the minors argued that the imposition of the law violated their constitutional rights to freedom of movement while their parents asserted that the law infringed upon their fundamental rights to raise and supervise their children. The plaintiffs contended that because the law violated protected fundamental rights, the District of Columbia must show that the law was necessary to promote a compelling interest and that it was narrowly tailored to advance that purpose.

The U.S. District Court for the District of Columbia found that both the minors and parents had protected fundamental rights under the U.S. Constitution and analyzed the curfew law to determine whether the District of Columbia law was constitutional. The court found that the District of Columbia had a compelling interest in enacting the law because the three objectives were to (1) protect children from becoming victims or perpetrators of crimes, (2) assist parents in exercising their responsibility over minors, and (3) prevent all persons from the dangers posed by unsupervised minors who are out late at night and in the early morning.

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63. Qutb v. Bartlett, 11 F.3d 494 (5th Cir. 1993).

64. *ACLU Challenges San Diego's Curfew Law; Lawsuit Filed in Federal Court on Behalf of Teenagers, Parents*, Press Release by American Civil Liberties Union, March 15, 1995.

65. Tony Perry, *Teen Curfew in San Diego Upheld*, L.A. TIMES, Dec. 19, 1995.

66. Hutchins v. District of Columbia, 942 F. Supp. 665 (D.D.C. 1996).

The court found, however, that although the District of Columbia had a compelling interest in enacting the law, it was drawn broadly without consideration of less restrictive means to achieve the three aims of the curfew law. The Federal district court was critical of the data compiled by the District of Columbia and concerned with the city's inability to show that the enactment of a curfew ordinance would preserve public safety. In drafting the law, the City Council relied on "extrapolated" crime statistics that did not distinguish between crimes committed by juveniles or the time of day that the crimes occurred. In other words, the statistics did not demonstrate a clear connection between the stated purpose of the law and the restriction imposed upon all juveniles. The court also found that the data that the District of Columbia relied upon was flawed. The data included 18-year-olds as minors, whereas the curfew law considered those under 17 years of age as minors. Further, the majority of the data was based upon Federal statistics rather than local statistics. In fact, the court indicated that the District of Columbia ignored data showing that more than 90 percent of all juveniles do not commit crimes and are not arrested at night or at any other time.

As a result, the court found that the District of Columbia's evidence was insufficient to support the imposition of a curfew on all minors as a means to reduce juvenile crime and victimization and that the law was not narrowly drawn to achieve the purpose of the curfew law. Consequently, the court found that the law impermissibly interfered with a minor's right of freedom of movement and a parent's right to raise and supervise his or her minor children and held that the curfew law was unconstitutional.

Recent Initiatives

Although empirical studies addressing the impact of juvenile curfew ordinances have not yet been undertaken, officials of several localities that recently adopted curfew legislation have self-reported success since the introduction of these initiatives into their communities. For example, 3 months after the enactment of the Dallas curfew ordinance, the Dallas Police Department found that juvenile victimization during curfew hours declined by 17.7 percent and juvenile arrests during curfew hours dropped by 14.6 percent, according to the recent OJJDP report.[67]

New Orleans, which has enacted one of the strictest curfew ordinances in the country, also reports a significant decrease in juvenile crime since its curfew ordinance went into effect in May 1994. The dusk-to-dawn curfew, enacted in response to an escalating level of violent crime involving juveniles as both perpetrators and victims, was influential in decreasing the incidence of youth crime arrests by 27 percent the year after its adoption. In that same time period, armed robbery arrests decreased by 33 percent and auto theft arrests decreased by 42 percent.[68]

A curfew ordinance in Long Beach, CA, amended in January 1994, has enjoyed similar success. In an attempt to meet the needs of the city's growing population and thwart escalating gang activity, Long Beach officials established a 10 p.m. to 6 a.m. curfew law. The ordinance led to a 14-percent decrease in the average number of crimes committed per hour in 1994, compared with 1993. Gang-related shootings decreased in that time period as well, down nearly 23 percent. However, Chief William Ellis of the Long Beach Police Department acknowledged that Long Beach has experienced displacement of youth delinquency. "In Long Beach," Ellis said, "approximately twice as many crimes per hour are committed during noncurfew hours as during curfew hours."[69]

Effective curfew programs share several components. Two of the keys to the success of any curfew ordinance are sustained enforcement and community involvement, according to the OJJDP report. Curfew laws are less successful when they are enforced rigorously immediately after adoption, but become more loosely enforced as limited law enforcement resources and personnel are pushed into other policing efforts. City officials ensure a program's success by making a long-term commitment to enforcement and by enlisting volunteers to fill out paperwork, wait for parents to pick up their children, or give on-the-spot counseling to parents and children.

67. CURFEW, *supra* note 54, at 4–5.

68. *Id.* at 7.

69. Chief Samuel D. Pratcher, *A Response to Juvenile Curfew Violations*, 61 POLICE CHIEF 58, 58 (Dec. 1994).

Other factors that contribute to the implementation of successful curfew policies include:

- Establishing a curfew center or using recreational, religious, or educational facilities to hold violators while they await their parents.
- Staffing centers with community social service providers and volunteers; providing intervention services for juveniles and their families.
- Creating specific procedures for repeat offenders; recreational, educational, and job opportunities for offenders; and antidrug and antigang programs.
- Providing a hotline for community questions or problems related to curfews and juvenile delinquency in general.

Parental Responsibility Laws

Susan and Anthony Provenzino of St. Clair Shores, MI, knew their 16-year-old son, Alex, was troubled. His first arrest occurred in May 1995, and in the year that followed, he continued his delinquent behavior by committing burglary, drinking alcohol, and using and selling marijuana. Alex was difficult at home as well, verbally abusing his parents and once attacking his father with a golf club. Although the Provenzinos were disturbed by Alex's behavior, they supported his release from juvenile custody during the fall of 1995, fearing he would be mistreated in the youth facility where he was detained—a facility where juveniles charged with more violent crimes were housed.[70]

It is unlikely that the Provenzinos expected to be the first parents tried and convicted of violating a 2-year-old St. Clair Shores ordinance that places an affirmative responsibility on parents to ". . . exercise reasonable control over their children."[71] On May 5, 1996, however, after a jury deliberated only 15 minutes, the Provenzinos were convicted of violating the parental accountability ordinance. They were each fined $100 and ordered to pay an additional $1,000 in court fees.[72]

The Provenzino case brought national attention to a growing trend at both State and local levels to combat youth crime: the enactment of parental responsibility laws imposing liability on parents for the delinquent behavior of their children. Caught somewhere between prevention and punishment for both children and parents, these laws attempt to involve parents in the lives of their children by holding them civilly and/or criminally liable for their children's actions. Penalties for violation of these laws include increased participation by parents in juvenile proceedings; financial responsibility for restitution payments and court costs; financial responsibility for detention, treatment, and supervisory costs; participation in treatment, counseling, or other diversion programs; and criminal responsibility and possible jail time for parents found negligent in their supervision. Although the effectiveness of these laws has not been evaluated in a systematic way, the notion of parental responsibility has attracted broad support.

Various types of legislation mandating a minimum level of parental responsibility have been a part of this Nation's history since its inception. The objective of these laws is to impose affirmative duties on parents to provide necessities for the youth in their custody and to ensure they do not abuse or abandon their children. According to P. Thomas Mason, in his article "Child Abuse and Neglect," States have established criminal sanctions against parents who have abused, severely neglected, or abandoned their children since the early years of American history.[73] Other related efforts to establish a minimum standard of parenting include compulsory school attendance laws and criminal nonsupport laws.[74]

Tort liability for damages caused by delinquent youth is yet another way States traditionally have held parents accountable for the misdeeds of their children. Typically, tort law varies from State to

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70. Jill Smolowe, *Parenting on Trial*, TIME, May 20, 1996, at 50.

71. *Id.*

72. Robin Meredith, *Michigan Parents Convicted for Youth's Misconduct*, N.Y. TIMES, May 10, 1996.

73. Howard Davidson, *No Consequences—Re-examining Parental Responsibility Laws*, 7 STAN. L & POL'Y REV. 23, 25 (1996) (citing P. Thomas Mason, *Child Abuse and Neglect, Part I: Historical Overview, Legal Matrix and Social Perspective*, 50 N.C.L. REV. 293–302 (1972)).

74. *Id.*

State regarding the monetary thresholds on damages collected, the age limit of the child, and the inclusion of personal injury in the tort claim. Hawaii was the first State to enact such legislation in 1846, and its law remains one of the most broadly applied in that it does not limit the financial bounds of recovery and imposes liability for both negligent and intentional torts by underage persons.[75] Florida, Louisiana, Massachusetts, and New Jersey also do not place a limit on the amount of recovery. Today, all States but New Hampshire and New York have provisions holding parents civilly responsible for youth crime, with an average maximum recovery amount of $4,100.[76]

Legislation holding parents criminally responsible for the delinquent acts of their children quickly followed the enactment of civil liability and neglect-type statutes. In 1903, Colorado became the first State to establish the crime of contributing to the delinquency of a minor (CDM). Supporters of CDM statutes believe that the conditions within the family are the most predictive component of a child's behavior and that it is the responsibility of the parent to provide sufficient positive guidance to children on the importance of adhering to the values of society at large. This type of legislation quickly gained popular support, and since the enactment of the Colorado initiative, at least 42 States and the District of Columbia have passed similar legislation.[77] One of the oldest of such laws, an amended CDM statute from California, includes misdemeanor sanctions against parents who fail ". . . to exercise reasonable care, supervision, protection and control over their children."[78] The California law was expanded in 1988 as a component of a larger, antigang initiative undertaken by the State. Violation of the provision brings a misdemeanor charge and may include a fine no greater than $2,500 and a 1-year prison term. In 1995, Arizona, Louisiana, and Wyoming enacted comparable laws creating a crime of "improper" or "negligent" parental supervision, with misdemeanor sanctions similar to the law in California.

Some States have taken action to hold parents liable when children gain access to a firearm, but their provisions vary in language and parental intent requirements. At least nine States hold adults criminally responsible for storing a loaded firearm in such a way as to allow a minor to gain access. Some of these provisions include an enhanced penalty if the minor causes injury or death to himself or another person and create exceptions for parental liability when the minor gains access to a weapon by unlawful entry into the home or place of storage or if the firearm is used in self-defense. In addition, 13 States have provisions that create criminal liability when a custodial adult or parent is aware that his or her child possesses a firearm unlawfully and does not take action to prevent the possession.[79] Typically, penalties levied on parents for violation of safe storage laws are misdemeanors, but parents found guilty of these crimes in California, Connecticut, and Florida are subject to felony charges under some circumstances.[80]

While some States impose criminal liability on parents of delinquent youth, many more have enacted less stringent types of parental responsibility laws in the past 2 years. For example, some accountability initiatives require increased parental involvement in juvenile proceedings. Recent initiatives in Kansas, Michigan, and Texas require parents to attend the hearings of children adjudicated delinquent or face contempt charges. New legislation in Alabama, Kansas, Kentucky, and West Virginia amends existing laws to require parents to pay the court costs associated with these proceedings.

Some States impose financial responsibility on parents for the costs incurred by the State when youth are processed through the juvenile justice system. New laws from Florida, Idaho, Indiana, North Carolina, and Virginia require parents to reimburse

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75. Gilbert Geis & Arnold Binder, *Sins of Their Children: Parental Responsibility for Juvenile Delinquency*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 307 (1991).

76. Elizabeth Pearson, Parental Responsibility Laws: An Overview 62 (Aug. 6, 1996) (unpublished M. Public Affairs thesis, University of Colorado) (on file with author).

77. *Id.*

78. CAL. PENAL CODE § 272 (West 1988).

79. MODEL JUVENILE HANDGUN CODE 36 (National Criminal Justice Ass'n, Unpublished Draft 1995) [hereinafter MODEL HANDGUN CODE].

80. NATIONAL CONFERENCE OF STATE LEGISLATURES, LEGISBRIEF, KIDS, GUNS, AND ACCIDENTS: TAKING RESPONSIBILITY (Sept. 1993).

the State for the costs associated with the care, support, detention, or treatment of their children while under the supervision of State agencies. Further, measures from Idaho, Maryland, Missouri, and Oklahoma require parents to undertake restitution payments when children are not financially able to compensate their victims.

Initiatives to encourage parent and child togetherness are yet another approach incorporated into parental responsibility legislation in some States. In the past 2 years, Colorado, Florida, Louisiana, Missouri, and Texas have enacted legislation that requires parents and children to participate in community service activities after the youth has been in trouble with the law. In addition, new laws in Arizona, Florida, Indiana, Kansas, Kentucky, North Carolina, North Dakota, and Oregon require parents to attend counseling or other court-ordered treatment programs. Recent legislation in Arkansas, Colorado, Texas, and Wisconsin requires adult participation in parent training and responsibility courses. Often, involvement in these types of programs is a diversion option, with participation deferring any further punitive sanction from the court.

While many States have embraced the idea of holding parents responsible for the actions of their children—at least 36 States have mandated some type of responsibility provision beyond civil liability for parents or guardians of delinquent children—others are critical of the idea, fearing legal challenges and citing a dearth of empirical evidence supporting the efficacy of parental responsibility initiatives.

Some legal scholars say legislation that attempts to define parent behavior is worded vaguely. This vagueness makes it difficult for ordinary citizens to understand what type of behavior falls within the purview of the law. For example, the lack of clarity of some CDM statutes has led courts in Connecticut, Louisiana, Oregon, and Wyoming to strike down this type of parental accountability law on "void for vagueness" grounds. The inability of the original statute to define practical, realistic, and comprehensible standards for the court to use consistently in determining parental negligence or incompetence is what led to the laws in these States being declared unconstitutional.[81]

Attempts to prescribe parent behavior may violate the established privacy right in child rearing. This fundamental right to privacy in family matters was established by the U.S. Supreme Court with two cases in the mid-1920's, *Meyer* v. *Nebraska*[82] and *Pierce* v. *Society of Sisters*.[83] In each case, the High Court restricted the State from impinging on parents' authority to raise a child. In only one case, *Williams* v. *Garcetti*,[84] has the constitutionality of a current parental responsibility law been challenged at the State level (see sidebar).

To date, no empirical study has been conducted to support the claim that these laws have an impact on youth crime. Much of the analysis of parental accountability laws has been limited to readily available data and has lacked the precision of statistical analysis. For example, Paul Alexander, a judge from Toledo, OH, tracked more than 1,000 cases of CDM violations between 1937 and 1946, half of which involved parents. According to Alexander, 75 percent of the parents pleaded guilty or were convicted, and of them, 25 percent were sent to prison as a part of their sentence. Although parents prosecuted under the statute exhibited some positive change in their parenting skills, the number of parents arrested steadily increased over the 10-year period. On the basis of this experience, Alexander noted: "We find no evidence that punishing parents has any effect whatsoever on the curbing of juvenile delinquency... imprisonment means breaking up the family; fining means depriving the children and family of sustenance."[85]

In addition, a 1963 study undertaken by the U.S. Department of Health, Education and Welfare examined 16 States that had enacted civil parental liability statutes and compared the rate of juvenile crime in those States with those in the rest of the

81. Kathryn Parsley, *Constitutional Limitations on State Power to Hold Parents Criminally Liable for the Delinquent Acts of Their Children*, 44 VAND. L. REV. 446, 453 (1991).

82. Meyer v. Nebraska, 262 U.S. 390 (1923).

83. Pierce v. Society of Sisters, 268 U.S. 510 (1925).

84. Williams v. Garcetti, 853 P.2d. 507 (1993).

85. Geis & Binder, *supra* note 75, at 319.

country. The study revealed that the rate of juvenile delinquency in the 16 States was slightly higher than the national average.[86]

Recent examples of self-reporting, however, offer a more promising evaluation of parental responsibility legislation. One well-publicized ordinance was adopted in Silverton, OR, in the fall of 1995, where parents are charged with the misdemeanor of "failing to supervise a minor" when a child under the age of 18 years violates any provision of the Silverton Municipal Code.[87] Although the ordinance had only been in effect a short time, Silverton Mayor Ken Hector reported that the community of 6,400 had experienced a 44.5-percent reduction in juvenile crime and reduced levels of truancy. Further, school officials reported increases in the level of involvement of parents with their children.[88]

Combating Street Gangs

An important piece of the juvenile justice reform movement in this Nation has been devoted to finding new ways to reduce gang-related crime and

California's Statute Prevails Against Constitutional Challenge

California's law imposing criminal parental responsibility is one of the most stringent in the Nation. Enacted in 1988 as part of the Street Terrorism and Prevention Act, the law amended the State's CDM law by making it a crime when parents or guardians do not "... exercise reasonable care, supervision, protection, and control" over their children.[89]

One case from the Los Angeles area brought this provision before the State supreme court. In 1989, Gloria Williams was the first woman to be charged under the amended CDM statute. Williams' then-12-year-old son was suspected of having participated in a gang rape of a young girl. When police visited Williams' home, they found "...family photo albums [containing] pictures of the 37-year-old Williams posing with gang members known as 'Crips,'" and "... pictures of her 4-year-old son pointing a pistol at the camera [and] spray-painted graffiti adorning the bedroom walls of the modest stucco house of Williams and her three children."[90] The investigating detective, after searching the house, was quoted as saying, "I couldn't believe my eyes. In all my 20 years on the police force, I have never seen anything like this. It was obvious that the mother was just as much part of the problem because she condoned this activity."[91]

When it was shown that Gloria Williams had participated in a parenting course 2 months earlier, however, a local prosecutor indicated that it would violate the spirit of the law to try her because she had indeed taken steps to control her children by participating in parent education. As a result, the case against Williams was dropped.[92]

On behalf of Ms. Williams, Gary Williams, a professor of law at Loyola University Law School in Los Angeles, partnered with the ACLU in filing a taxpayers' lawsuit in California superior court. The plaintiff's contention was that the parental responsibility law was impermissibly vague and infringed upon the established right to privacy in family matters. Williams contended that the implementation of the law would be a waste of taxpayer funds.

Through a series of judgments and appeals, the Supreme Court of California upheld the language of the legislation, finding that the statute set a reasonable standard for parents who are making attempts to guide and control their children and that a statutorily defined notion of perfect parenting would be both inflexible and impractical.[93]

86. Toni Weinstein, *Visiting the Sins of the Child on the Parent: The Legality of Criminal Parental Responsibility Statutes*, 64 S. CAL. L. REV. 863, 878 (1991).

87. Silverton, Ore., Ordinance 95–117 (1995).

88. Hope Viner Sanborn, *Kids' Crimes Can Send Parents to Jail*, A.B.A. J., Mar. 1996, at 28.

89. CAL. PENAL CODE § 272.

90. *Parents Getting Jailed for Kids' Gang Activities*, DENVER POST, May 7, 1989, at 4A.

91. *Gang Member's Mother Denies 'Failure' Charge*, L.A. TIMES, May 20, 1989, at 2.

92. Geis & Binder, *supra* note 75, at 315.

93. Adam Culbreath, *Parental Liability Law Upheld in California*, YOUTH LAW NEWS, Sept.–Oct. 1993, at 12.

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violence. A number of States have enacted laws that enhance the penalties for gang-related offenses, and many local jurisdictions have adopted ordinances that are designed to curb or outlaw gang-related activities. Federal authorities and local law enforcement agencies also have combined resources to create multijurisdictional task forces and other bodies to investigate and prosecute gang members. Meanwhile, a host of prevention and intervention measures have been implemented in the schools to dissuade children and adolescents from joining gangs and engaging in crime and violence.

The term "gang" has no fixed legal meaning.[94] Definitions of gangs have varied over time, according to the perceptions and interests of the definer, academic fashions, and the changing social reality of the gang. Once even defined as "play groups," the term gang has increasingly taken on pejorative connotations. In the most recent view, gangs are considered more pathological than functional organizations, so that the term has become almost synonymous with violent and criminal groups.[95] Therefore, inherent in most recent definitions of a gang is the idea of criminality. Under one definition, a group is considered a gang if it has a formal organizational structure, identifiable leadership, identifiable territory, and recurrent interaction, and is engaged in serious or violent criminal behavior.[96]

This view of gangs—as pathological and criminal—underlies many of the initiatives that States and local jurisdictions have adopted in the past decade. Because many acts of juvenile delinquency are committed by groups, the notion of juvenile delinquency has become closely associated with gang activity. Still, without an accepted definition to fall back on, State and local jurisdictions have tended to develop their own ideas of what constitutes "gang activity."

California, for example, defines "criminal street gang" as an ongoing organization, association, or group of three or more persons whose primary activities include the commission of one or more serious or violent criminal acts; that has a common name or identifying sign or symbol; and "whose members individually or collectively . . . have engaged in a pattern of criminal gang activity."[97]

The Spread of Gangs

By the early 1980's, gangs had sprung up in most of the large cities in the Nation, especially in the poorer inner-city and ring-city areas. In 1989, delinquent gangs were located in almost all 50 States. Together, 35 cities reported 1,439 gangs, with California, Florida, and Illinois leading the Nation in gang concentrations. Of the total 120,636 gang members reported in all surveyed cities, 70,000 were estimated to reside in Los Angeles County and 12,000 in Chicago.[98] As of 1991, an estimated 4,881 gangs with 249,324 members existed across the Nation.[99]

Using the results of a 1993 national survey of law enforcement agencies, researchers estimated that the number of gangs jumped 77 percent between 1991 and 1993 to 8,625 gangs. They put the number of gang members at 378,807 and estimated that there were 437,066 gang-related crimes. Researchers, however, noted that the gang-crime problem is underestimated because many cities do not have the capacity to compile statistics and report on gang-related criminal activity. If estimates for the missing jurisdictions are included in their calculations, researchers put the number of gangs at 16,643, the number of gang members at more than 555,181, and the number of gang-related crimes at 580,331.[100]

Less urban areas are no longer safe from the infiltration of gangs and gang violence. Although some of the gangs are branches of megagangs, such as Los Angeles' Crips and Bloods, most gangs in midsized or smaller cities either originate locally or "are

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94. National Institute of Justice, U.S. Dep't of Justice, Research in Brief, Prosecuting Gangs: A National Assessment 2 (Feb. 1995) [hereinafter Prosecuting Gangs].

95. Arnold Goldstein, Delinquent Gangs: A Psychological Perspective 3–6 (1991).

96. James C. Howell, Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, Fact Sheet No. 12 at 1 (April 1994) [hereinafter Howell Fact Sheet].

97. Cal. Penal Code § 186.22 (West Supp. 1996).

98. Goldstein, *supra* note 95, at 22–23.

99. Howell Fact Sheet, *supra* note 96.

100. National Institute of Justice, U.S. Dep't of Justice, Research in Brief, Estimating the National Scope of Gang Crime from Law Enforcement Data 3 (Aug. 1996).

started by nonresident gang members via kinship, alliance, expansion of turf boundaries, or movement of gang members' families into new areas."[101] The FBI and local police have reported the presence of Crips and Bloods in as many as 45 western and midwestern cities.[102] Again, family migration, not relocation, appears to be the main reason for the emergence of gangs in smaller cities.[103]

The average gang is composed of males, ages 12 to 21, who reside in poor, central areas of cities with populations of more than 200,000. Although research on gang ethnicity is sketchy at best, one survey of gangs in large cities indicated that approximately 48 percent of all gang members are African-American, 43 percent Hispanic, 5 percent Asian, and 5 percent white.[104]

Gangs, Drugs, and Violence

Little empirical research exists on gang involvement in drug trafficking. One 1991 study in Los Angeles found that while as many as one-quarter of gang members were somehow involved in crack cocaine distribution, drug trafficking was not a primary gang activity.[105] News media accounts and conventional wisdom have linked inner-city violence to gang drug wars, but research has shown that most inner-city homicides are the result of turf battles, not drug violence.

In a 1995 study of Pomona and Pasadena, CA, two smaller cities outside Los Angeles, gang members were found to be involved in about 27 percent of arrests for cocaine sales and about 12 percent of the arrests for sales of other drugs. Crack cocaine was often present in gang cases, and gang-related drug cases were more likely to involve young African-American males than members of other age or racial groups. However, most aspects of cocaine sales, including location, firearm presence, and amount of cash, did not vary because of gang involvement. Firearms were involved in only 10 percent of the cases, and violence was present in only 5 percent of the incidents.[106]

A 1993 study of the four largest and most criminally active street gangs found only 8 of the 285 gang-motivated homicides between 1987 and 1990 to be related to drugs. Approximately 90 percent of the violent crimes involving youth gangs in the Boston area between 1984 and 1994 did not involve drug dealing or drug use.[107]

Approaches to Gang Control and Intervention

Gang problems traditionally have been local, urban problems, and governmental responses to gang problems traditionally have been focused at the local level. Yet, while the past decade has been marked by the spread of gangs and gang-related violence, it has also seen the growing confluence of Federal, State, and local efforts to control gang activity and reduce gang violence. Moreover, it has seen the rise of more proactive, community-based strategies for dealing with gangs.

Three general strategies for preventing gangs have been evaluated: preventing youth from joining gangs, transforming existing gangs into neighborhood clubs, and mediating and intervening in conflicts between gangs. Of the three approaches, prevention programs that integrate school curriculums with afterschool recreational activities seem to hold the most promise for preventing gang crime and violence.[108]

In areas where gang problems are endemic, such as Los Angeles County, prevention and intervention strategies combined with long-term, proactive investigations of entire gangs work better than reactive,

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101. GOLDSTEIN, *supra* note 95, at 22–23.

102. HOWELL FACT SHEET, *supra* note 96.

103. *Gang Migration*, NCJA JUSTICE RESEARCH (National Criminal Justice Association, Washington, D.C.), Nov.–Dec. 1995, at 9–10.

104. NATIONAL INSTITUTE OF JUSTICE, U.S. DEP'T OF JUSTICE, RESEARCH IN BRIEF, GANG CRIME AND LAW ENFORCEMENT RECORDKEEPING 8–9 (Aug. 1994).

105. HOWELL FACT SHEET, *supra* note 96, at 2.

106. NATIONAL INSTITUTE OF JUSTICE, U.S. DEP'T OF JUSTICE, RESEARCH IN BRIEF, STREET GANGS AND DRUG SALES IN TWO SUBURBAN CITIES 7 (Sept. 1995).

107. HOWELL FACT SHEET, *supra* note 96, at 2.

108. HOWELL GUIDE, *supra* note 32, at 96.

short-term investigations and prosecutions of individual gang members.[109]

State Initiatives

States have done their part in the fight against gangs by enhancing penalties for gang-related crime and fostering cooperation between jurisdictions and disciplines. Illinois, for example, has adopted a coordinated, holistic approach to addressing gang problems. In 1995, Governor Jim Edgar established by executive order the 35-member Governor's Commission on Gangs, with Attorney General Jim Ryan serving as chairman. The commission was composed of Federal and State prosecutors, police, educators, parents, clergy, health professionals, lawmakers, and representatives of business and labor.[110]

The commission has held 16 public hearings, a youth forum, and a 2-day conference at locales across the State, gathering testimony from nearly 150 witnesses. As a result of commission findings and recommendations, the Governor, in June 1996, signed legislation drafted by the commission establishing a witness protection program. He also appropriated $1 million for a pilot program, which will run through June 1998, to protect victims and witnesses who testify against gang members. The new law includes strict sanctions for gang members who commit crimes, including an imposition of harsher penalties for gang leaders convicted of drug dealing and mandatory reporting of any firearm-related incidents at public schools to law enforcement within 24 hours. The commission is expected to issue a report that will stress the need for get-tough measures balanced by more intervention and prevention programs.

Another recent antigang measure from Illinois creates offenses for compelling another to join a gang or deterring resignation from a gang. Moreover, the State has enacted a law that prohibits a person who has coerced another to join a gang from receiving probation, a conditional discharge, or periodic imprisonment.[111]

Enhanced sentencing is yet another State response to combating crime committed by gangs and gang members. Arkansas and California, among other States, have increased the penalties for specific gang-related violence, such as drive-by shootings. In September 1996, California Governor Pete Wilson signed a law extending indefinitely the California Street Terrorism Enforcement and Prevention Act, which was due to expire in January 1997 and which enhances penalties for gang-related activities.[112]

Other States have enacted statutes that enhance penalties for any criminal act committed by a gang member. For example, Tennessee enacted a law that adds criminal street gang membership as an enhancement factor for sentencing defendants who have committed a prior offense within the past 3 years. Provisions of a Nevada law include forfeiture of personal property that has been used in a gang crime and authorize schools to enforce antigang rules and develop gang-prevention problems.[113]

Local Initiatives

Local jurisdictions have a number of law enforcement approaches to controlling gang activity and reducing gang-related crime.[114] Cities have passed ordinances prohibiting cruising, loitering, and many forms of belligerent public behavior, such as discharging weapons on private property, consuming alcohol in public, and playing loud music. Other cities have cracked down on graffiti and other forms of vandalism by regulating the sale, purchase, or possession of materials used to deface property[115] and by adopting parental responsibility laws that make parents liable for the damage illegally caused

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109. U.S. General Accounting Office, Report to the Attorney General, Violent Crime: Federal Law Enforcement Assistance in Fighting Los Angeles Gang Violence 3 (Sept. 1996) [hereinafter GAO, Violent Crime].

110. *Attorney General Ryan: State Must Adopt Coordinated Approach to Gang Problem*, The Compiler (Illinois Criminal Justice Information Authority, Chicago, Ill.), Fall 1996, at 14.

111. Donna Lyons, National Conference of State Legislatures, State Legislature Report, 1995 Juvenile Crime and Justice State Enactments 9 (Nov. 1995) [hereinafter Lyons].

112. Cal. Penal Code § 186.22 (West Supp. 1996).

113. Lyons, *supra* note 111, at 9.

114. National Crime Prevention Council, New Ways of Working with Local Laws to Reduce Crime 41 (Nov. 1996).

115. *Id.* at 9.

by their children.[116] Still other cities closely enforce truancy and curfew ordinances.

Some cities have attempted to discourage gang membership by prohibiting behavior that manifests gang membership, such as wearing gang colors or using gestures that communicate gang affiliation. For example, the city of Harvard, IL, prohibits individuals from wearing gang-related colors, emblems, or insignia in public or from making any utterances or gestures that communicate gang membership or insult to other street gangs. Since the ordinance became effective, the number of gang-related arrests has decreased from 87 in 1994 to 0 as of July 11, 1996.[117]

To control gang-related violence in and near public housing projects, housing authorities are authorized by the U.S. Department of Housing and Urban Development (HUD) to insert provisions into leases prohibiting the use, display, or possession of firearms. Gang members or family members and associates of gang members face eviction if caught using or possessing guns.[118] Cities also have passed temporary ordinances banning access by gang members to public parks that have been the sites of confrontations between gangs.

Other cities have sought civil injunctions against gangs as "unincorporated associations" that prohibit targeted gang members from congregating in certain areas. Prosecutors in Los Angeles and nearby cities have implemented four gang injunctions, serving gang members with court documents and discussing with them activities prohibited by the court. Before a civil injunction against the Blythe Street Gang in April 1993, drive-by shootings were a weekly occurrence and a neighborhood grocery store was forced to close down. Since the injunction, the store is back, and at least a year has passed between drive-by shootings. A local community organization has received a major grant to make improvements to the neighborhood.[119]

Multijurisdictional Initiatives

Many counties and cities have found success in pooling resources with Federal and State agencies to fight and control gangs and gang-related violence. With the size and diversity of its gang problem, California, particularly Los Angeles County, has become a national leader in developing and implementing gang initiatives that draw on both Federal and local resources.

An estimated 150,000 members belong to more than 1,000 gang factions in the Los Angeles area, according to media reports. The *Los Angeles Times* reported that gang-related murders have accounted for roughly 40 percent of homicides in Los Angeles County in recent years. Although there has been an on-again, off-again truce between the two major gang divisions, the Crips and the Bloods, since the rioting surrounding the Rodney King verdict in the summer of 1992, gang-related violent crime continues to plague the region.[120]

As a response, Federal officials, in cooperation with local law enforcement authorities, launched the largest crackdown ever on Los Angeles gangs. They called their effort the Los Angeles Metropolitan Task Force (LA Task Force). The LA Task Force increased law enforcement efforts to combat violent gang crime—the FBI increased the number of agents who investigate gangs and gang-related crimes from about 74 to 100;[121] the U.S. attorney's office brought in an experienced gang prosecutor; and the local Bureau of Alcohol, Tobacco and Firearms (ATF) office announced plans to hire another 10 agents, largely to investigate gang members.

By using Federal racketeering laws and other tactics such as wiretapping, Federal and local officials attempted to break down gang factions, including State prison gangs, which contribute to the drug dealing and violence that plague the inner-city areas. Federal sentencing laws are more stringent than State laws, and because there is no Federal parole, convicted felons serve their full sentences. Gang

116. *Id.* at 10.

117. *Id.* at 42.

118. *Id.*

119. *Id.* at 44.

120. Terence Monmaney, *Medical Researchers Call Gang Killings 'Epidemic' in County*, L.A. TIMES, Oct. 4, 1995, at B1.

121. Jim Newton, *U.S. Mounts Sweeping Crackdown on L.A. Gangs*, L.A. TIMES, July 4, 1992, at A1.

members can also be spread across the Federal system rather than being housed in State prisons where many of their fellow inmates may have been members of their gang outside prison walls.

As part of a self-initiated review of the effort, the U.S. General Accounting Office (GAO) interviewed 37 members of local law enforcement agencies who had participated in the LA Task Force. The participants were asked which investigative methods worked best, if Federal contributions had been useful, and if multijurisdictional cooperation had been helpful in reducing gang violence.[122]

Participants reported that Federal assistance to Los Angeles law enforcement had been helpful in fighting the area's gang epidemic and was used for wiretapping and witness protection under Federal rules, overtime pay, equipment, office space, and money for informants and undercover purchases of drugs and firearms.

Most of the 24 line officers interviewed pointed to the task force's focus on long-term investigations of entire gangs, rather than reactive investigations of individual gang members, as a key to the LA Task Force's success. According to statistics provided to GAO, the LA Task Force was responsible for more than 2,000 arrests—almost half for violent crimes—between February 1992 and September 1995. Three-fourths of all Federal and State convictions coming from task force arrests were for violent crimes. GAO did not independently verify the statistics.

The LA Task Force was cited as an example of an effective program targeting violent crime in the U.S. Department of Justice's *Attorney General's Progress Report to the President* on the Anti-Violent Crime Initiative, released in September 1996. In particular, the Attorney General's report mentioned a 1-day effort in 1995 that resulted in a 57-percent drop in violent crime in one Los Angeles neighborhood.

The effort, called Operation Sunrise, was the result of more than 2 years of joint investigation of activities by the Eight Trey Gangster Crips. The gang made up less than 1 percent of the community's population but accounted for more than 80 percent of the area's violent crime, according to the GAO report. During the operation, Federal and local agents swept a 30-by-30-block area of South Central Los Angeles controlled by the gang, serving 120 search warrants in 1 day. The operation resulted in several Federal and State prosecutions, the confiscation of 67 firearms and 2,000 rounds of ammunition, and the seizure of 2 kilograms of methamphetamine.

Other initiatives that bring together Federal, State, and local resources and manpower are being tried across the country. Some of these efforts were highlighted in the Attorney General's progress report, including the following:

- In Michigan, the Safe Streets-Violent Crime Task Force conducted an investigation of the Home Invaders, a gang that had gained entrance to more than 100 homes in the Detroit area while posing as police officers. Twenty-two members were indicted on charges under the Federal Racketeer Influenced and Corrupt Organizations (RICO) and Violent Crimes in Aid of Racketeering statutes and for weapons possession.
- In Rhode Island, a Federal and State task force conducted a 21-month investigation of the Latin Kings called Operation Check. The task force, which was sponsored by the ATF, included State and local police, State corrections officers, the Rhode Island National Guard, the FBI, HUD, the U.S. Department of the Treasury, the U.S. Secret Service, and the Immigration and Naturalization Service (INS). The probe led to an 18-count RICO indictment against 11 Latin Kings. Four defendants had pleaded guilty as of September 1996. The rest were awaiting trial.
- In New York, a task force composed of the FBI, the U.S. Drug Enforcement Agency, INS, the U.S. attorney's office in Buffalo, the New York State Police, the Erie County Sheriff's Department, the Erie County and Genesee County district attorney's offices, and the police departments of Rochester, Amherst, and Buffalo conducted an 18-month investigation of several drug trafficking organizations and street gangs. Using court-authorized wiretaps, undercover operations, and other investigative techniques, the joint task force

122. GAO, VIOLENT CRIME, *supra* note 109, at 17.

probe resulted in the indictment of 71 defendants, including the leader of the Goodyear Crew, a street gang operating in Buffalo. Forty defendants have pleaded guilty, and the rest were awaiting trial, as of September 1996.[123]

Gang Prosecution

While specialized gang units are common in police departments of cities with gang problems, they are less common in prosecutors' offices. Those that have been established have begun to use a "vertical prosecution" process, whereby one attorney, or a group of attorneys, stays with a case from inception to conclusion. In California, several jurisdictions have combined vertical prosecution strategies with a type of proactive community policing-like prosecution.[124]

Whereas reactive prosecution means responding to crimes and closed investigations, a prosecutor's office using a proactive, community prosecution strategy attempts to stop the crime before it occurs or at least attempts to participate in the initial investigation. Instances of the former can include using city ordinances to force absentee landlords to clean up, fix up, or close down suspected crack houses. Examples of the latter include going with police to interview victims and witnesses, talking to gang members, and taking steps to protect witnesses. The San Diego County, CA, district attorney's office has a gang unit that has served as a national model for this approach.

The Movement Toward Graduated Sanctions

The development of graduated, or accountability-based, sanctions programs is one way that States attempt to ensure that juveniles adjudicated delinquent receive an appropriate disposition by the juvenile court. Inherent in graduated sanctions programs is the notion of providing swift and appropriate punishment to youth offenders based on the gravity of their offense and an assessment of the potential risk for reoffending, coupled with appropriate treatment to reduce the risk of recidivism. According to a recent report on juvenile justice initiatives published by the NCSL, a graduated sanctions system "... hold[s] young people accountable for their actions every step of the way—from the least to the most serious patterns of offending—while maintaining public safety. It provides swift and sure punishment when a youngster first commits a crime followed by progressively tougher sanctions if he or she continues to offend."[125]

The factors that led to the exploration of graduated sanctions in the administration of adult criminal justice in the early 1980's have served as a catalyst for similar action in the juvenile justice system. The first factor is a significant national shift toward the "just deserts" model in criminal justice policies. The model shifts away from a more rehabilitative focus to one that stresses offender accountability through more punitive sanctions as the most appropriate way to address criminal and violent behavior. According to a study on boot camps published by the U.S. Department of Justice, National Institute of Justice (NIJ), "the Nation entered the 1980's disillusioned by research that appeared to debunk the potential of rehabilitation ... throughout much of the 1980's the pendulum swung the other way; public concern with safety and giving offenders their just deserts dominated sentencing policy."[126]

Howard Snyder, director of systems research for the National Center for Juvenile Justice (NCJJ) in Pittsburgh, PA, commented in a *State Legislatures* article, "It is clear that there has been an attitude change toward the juvenile justice system. It's thought it cannot handle the perceived larger number of serious offenders. The pendulum has swung away from rehabilitation of the child and toward community protection."[127]

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123. U.S. Dep't of Justice, Antiviolent Crime Initiative: The Attorney General's Progress Report to the President 5–10 (Sept. 1996).

124. Prosecuting Gangs, *supra* note 94, at 5.

125. NCSL Legislator's Guide, *supra* note 33 at Graduated Sanctions.

126. Roberta C. Cronin, National Institute of Justice, U.S. Dep't of Justice, Boot Camps for Adult and Juvenile Offenders: Overview and Update 5 (Oct. 1994).

127. *Juvenile Crime, Grown Up Time*, State Legislatures (National Conference of State Legislatures, Denver, Colo.), May 1995, at 14–16.

This focus on accountability, when combined with an overly burdened juvenile justice system and growing detention costs, lends itself to the development of alternative sanctions for juvenile offenders. "Using risk and needs assessment in conjunction with graduated sanctions combines public safety with cost efficiency," according to the NCSL report. "It increases the likelihood that serious offenders will be incarcerated while those who present a lesser danger are placed in less expensive, community-based programs."[128] Typically defined as options that include a wide variety of correctional approaches, most intermediate sanctions claim multiple goals: saving money, deterring crime, protecting the public, and rehabilitating offenders.[129]

The model program of graduated sanctions developed by OJJDP "combines treatment and rehabilitation with reasonable, fair, human, and appropriate sanctions, and offers a continuum of care consisting of diverse programs."[130] The continuum set forth includes the following components for targeted populations:

- Immediate sanctions within the community for first-time, nonviolent offenders.
- Intermediate sanctions within the community for more serious offenders.
- Secure care programs for the most violent offenders.
- Aftercare programs that provide high levels of social control and treatment services.[131]

Recent State Action

More and more States are looking toward developing graduated sanctions programs to treat delinquent youth effectively and to spend State dollars wisely. Policymakers are undertaking a systematic study of how these types of sentencing options exist in current correctional programming and how they could be improved upon for the future. "Although it is not unusual for States to have a variety of programs for juvenile offenders," suggests the NCSL report, "few States have a statutorily provided means for applying different levels of sanctions and treatment as part of a structured, comprehensive juvenile justice system."[132]

Attention to graduated sanctions programs has come as a result of juvenile justice reform initiatives in some States that have emphasized local control and autonomy in the administration of juvenile justice. For example, the 1995 Texas juvenile code reform requires the adoption of a seven-step progressive sanctions policy. Each step defines sanction options available to juvenile court judges and probation officials for different classifications of delinquent juveniles. These classifications are based on the type of offense committed; past criminal or delinquent behavior; the effectiveness of previous interventions; and an assessment of special treatment, counseling, or training needs. Local boards governing the administration of juvenile justice may deviate from the progressive sanctions guidelines established by the code when the imposition of other sanctions is deemed more appropriate.[133]

A similar initiative, the Virginia Juvenile Community Crime Control Act, was enacted in 1995 as a precursor to the State's 1996 juvenile code reform. The intent of the legislation was to "establish a community-based system of progressive intensive sanctions and services that corresponds to the severity of offense and treatment needs." Among other things, the law allows counties and cities to develop community-based systems that include services such as diversion programs, community service, restitution, house arrest, intensive juvenile supervision, substance abuse assessment, first-time offender programs, family counseling and treatment, day treatment, aftercare, and other residential and nonresidential programs.[134]

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128. NCSL Legislator's Guide, *supra* note 33, at Graduated Sanctions.

129. Blair B. Bourque et al., National Institute of Justice, U.S. Dep't of Justice, Boot Camps for Juvenile Offenders: An Implementation Evaluation of Three Demonstration Programs 2 (Jan. 1996).

130. Howell Guide, *supra* note 32, at 133.

131. *Id.*

132. NCSL Legislator's Guide, *supra* note 33, at Graduated Sanctions.

133. Tex. Fam. Code Ann. §§ 59.001–59.010 (West 1995).

134. Va. Code Ann. §§ 16.1–309.2 to –318 (Michie Supp. 1996).

Other States are taking action to initiate graduated sanctions programs for youth. The State of Kansas created the Kansas Youth Authority in 1995 to study and make recommendations for the improved delivery of juvenile justice services in the State, including the development of alternative sanctions programs and confinement options. Likewise, an initiative in Illinois mandates that the State supreme court's Division of Probation Services must determine viable, structured intermediate sanctions for juveniles on probation or under State supervision.[135] A 1996 Nebraska enactment requires the Office of Juvenile Services to establish an array of community-based services for juveniles and their families across the State, with a minimum of eight geographic sites, based upon expansion of pilot projects developed by the office.[136]

Inherent in this concept of providing a systematic range of appropriate sanctions and treatment is the idea that State and local criminal justice staff must approach each juvenile delinquent as an individual. According to the OJJDP comprehensive strategy, risk assessment tools "should be employed to determine the most appropriate sanction for each youth, with assessments based on the risk the offender poses to society, the nature of the offense for which the youth is committed, the number and nature of prior offenses, and the presence of other risk factors."[137]

States continue to amend existing assessment tools to fit the appropriateness of the population of youth offenders. Under the comprehensive juvenile justice reform enacted in Connecticut, the Office of Alternative Sanctions must develop risk assessment tools and professional evaluation teams for youth adjudicated delinquent in order to facilitate their appropriate placement in existing prevention, intervention, and sanction programs.[138] Intake procedures were amended with a juvenile justice revision in Kansas in 1996. Now, juvenile intake and assessment workers are required to use a standardized risk assessment tool developed by the newly created Commission of Juvenile Justice to collect relevant information concerning the criminal and social histories of alleged youth offenders.[139]

Juvenile Boot Camps

Boot camps for juveniles have evolved from their counterparts in the adult criminal justice system. Currently, juvenile boot camps are operating in 10 States—Alabama, California, Colorado, Indiana, Iowa, Louisiana, Massachusetts, Mississippi, New York, and Ohio.[140] Although boot camps have been popular in recent years and have maintained their appeal with policymakers, corrections officials, and the public in general, results from recent evaluations suggest that the efficacy of these programs is questionable at best.

The first adult boot camp program started in Georgia in 1983. Today, more than 70 boot camp programs are operating in more than 30 States. Programmatic features of boot camps include rigorous physical conditioning; discipline; activities to bolster self-esteem, confidence, and leadership; and an emphasis on militarylike rules. Also included in most programs is a combination of physical labor, drug and psychological treatment, and education initiatives. Participants have typically been convicted of nonviolent crimes and are sentenced to boot camp programs for between 90 and 180 days. Following this stay, the offender is returned to the community, usually with some kind of intensive supervision and aftercare.[141]

The most comprehensive evaluation of boot camps done to date was undertaken by Doris Layton-MacKenzie and her colleagues at the University of Maryland, with funding from NIJ. The study compared eight boot camp programs—those in Florida, Georgia, Illinois, Louisiana, New York, Oklahoma, South Carolina, and Texas—and examined the extent to which they met their goals of reducing prison crowding and changing the behavior of offenders.

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135. LYONS, *supra* note 111, at 7.

136. NEB. REV. STAT. § 83-925.05 (Michie Supp. 1996).

137. HOWELL GUIDE, *supra* note 32, at 133.

138. CONN. GEN. STAT. § 46b-120 (1995).

139. KAN. STAT. ANN. § 38-1601 (Supp. 1996).

140. GEORGE M. CAMP ET AL., 1995 CORRECTIONS YEARBOOK: JUVENILE CORRECTIONS 47 (1995).

141. *Arizona, Maryland Close Boot Camps, Citing Questionable Impact, Costs*, JUSTICE BULLETIN (National Criminal Justice Ass'n, Washington, D.C.), Apr. 1996, at 1, 18.

The results of the extensive survey indicate that boot camps must have a myriad of factors in place before they can elicit cost savings or impact recidivism. According to an article by Layton-MacKenzie summarizing the survey, "The principal findings are that most [boot camp] programs produce positive attitudinal changes in participants, have few if any effects on subsequent criminality, and are likely to reduce prison crowding only if program admissions are tightly controlled to assure that spaces are allotted to prison-bound offenders ... We do not know yet how to organize boot camps with reasonable confidence that they will achieve their intended results."[142]

Evaluation of Juvenile Boot Camps

The factors behind the creation of juvenile boot camps mirror those that led to their creation in the adult criminal justice system: an increasing incidence of youth crime, overburdened juvenile courts, and the growing costs of youth detention. According to NIJ, juveniles in custody for delinquent offenses increased 35 percent from 1978 to 1989, a period when the youth population of the United States declined by 11 percent. As a result, "satisfactory alternatives to long-term institutionalization are as welcome in the juvenile system as they are in the adult system."[143]

The first juvenile boot camp was developed in Orleans Parish, LA, in 1985. Since then, 10 States have begun operating juvenile boot camps, which vary in size, eligibility requirements, and programming. Due to the relative newness of these programs, a limited body of research is available on their makeup and efficacy. The American Institutes for Research (AIR), the Institute for Criminological Research (ICR) at Rutgers University, and Caliber Associates, with support from NIJ and OJJDP, have researched existing juvenile boot camp programs and have sponsored and evaluated OJJDP-funded pilot juvenile boot camp programs in three U.S. cities.

The results of telephone and mail surveys conducted by ICR, supplemented by written reports on existing programs, indicate that juvenile boot camps deem as eligible for participation "mid-range" offenders, that is, those who have been involved with the juvenile justice system before and not performed well with lesser sanctions, like probation, but who are not yet established criminals. Juvenile boot camp programs typically exclude some types of offenders, but only a very few limit eligibility to those who are nonviolent or first-time offenders.[144] Most have determined that youth in their mid- to late-teens are the appropriate age group for this type of sanction.

Although the goals of reducing recidivist behavior and rehabilitating youth are common to both juvenile and adult programs, boot camps for juveniles have retained more of the rehabilitative focus that remains an underpinning in the juvenile justice system. "In keeping with the juvenile justice system's historical focus on rehabilitation, the rationale for boot camps typically incorporates explicit assumptions about the needs and deficits of delinquent youth, and the remedial, counseling, and aftercare programs necessary to address those needs," according to the recent ICR/NIJ report.[145] The ICR/NIJ survey results support this statement and report that these camps typically allocate more than half a day on education and counseling activities, spending a minimum of 3 hours on academic education. Further, substance abuse treatment, rehabilitative counseling, and intensive community supervision upon release are common features of most boot camp programs.[146]

Much of what is known about the efficacy of juvenile boot camps has come about as a result of the research sponsored by OJJDP and NIJ, in collaboration with AIR and ICR, and by an evaluation conducted for OJJDP by Caliber Associates. In fall 1990, OJJDP initiated a juvenile boot camp demonstration study to examine the feasibility and appropriateness of developing a boot camp model for youth offenders. In 1991, three sites received awards to establish and implement juvenile boot camps: Cuyahoga County Court of Common Pleas, Cleveland, OH, in association with the North American

142. Doris Layton-MacKenzie, *Boot Camps: A National Assessment*, 5 OVERCROWDED TIMES 1, 14–15 (Aug. 1994).

143. BOURQUE ET AL., *supra* note 129, at 2.

144. CRONIN, *supra* note 126, at 36.

145. *Id.* at 36.

146. *Id.* at 38.

Family Institute; Colorado Division of Youth Services, Denver, CO, in association with New Pride, Inc.; and Boys and Girls Clubs of Greater Mobile, Mobile, AL, in association with the Strickland Youth Center of the Mobile County Juvenile Court and the University of South Alabama. NIJ, working with AIR and ICR, sponsored the demonstration programs' process evaluation, while an impact evaluation was conducted by Caliber Associates.

The three boot camps involved in the study adopted a structured selection process to recruit nonviolent, nonhabitual offenders under the age of 18 for the pilots. A 90-day residential boot camp phase was established with an aftercare component of 6 to 9 months. Youth were exposed to militarylike routine, discipline, and physical conditioning and to rehabilitative programming, such as academic instruction, counseling, and substance abuse education. All sites encouraged participants to pursue academic and vocational training or employment during the period of intensive, yet progressively diminishing, supervision.[147]

The evaluation found that all three programs reported high attrition rates for noncompliance, absenteeism, and new arrests. Evaluators found that although the youth assigned to boot camps completed the residential program at high rates (96 percent in Cleveland, 87 percent in Mobile, and 76 percent in Denver), many failed to complete the aftercare portion of the program. Evaluators concluded that:

> What appeared to be a promising prognosis at the conclusion of the boot camp disintegrated during aftercare. All three programs were plagued by high attrition rates for noncompliance, absenteeism, and new arrests during the aftercare period. No other indicators of progress were observed during this phase that would help pinpoint where the problems lay. In all fairness to the programs, aftercare was particularly affected by unexpected cuts in Federal support, especially in Denver and Mobile, where budget reductions resulted in programs far less comprehensive than originally planned . . . at this juncture, it does not appear that the demonstration programs solved the problem that typically plagues residential correctional programs: inmates who appear to thrive in the institutional environment but falter when they return home.[148]

The initial evaluation results were not conclusive with respect to program costs or impact. They drew no conclusions about the long-term impact of the programs because the study did not track postprogram recidivism and only recorded when a participant's arrest prompted his termination in the program. Of youth entering the boot camps, nearly 33 percent in Cleveland, 25 percent in Denver, and 11.5 percent in Mobile were dropped from the program for being rearrested. "Without knowing what the arrest rates would have been for a control group of comparable youths [youths convicted of similar crimes, with similar backgrounds who were not committed to a boot camp program], it is difficult to interpret what these attrition rates mean," the report said. "Neither can the program's impact on correctional crowding or cost savings be assessed without more information about recidivism and the costs of alternative placements."[149]

Although the outcomes in the three demonstration sites were not yet known, the process evaluators concluded that boot camps can be implemented in the juvenile justice system. They developed several recommendations concerning the implementation of juvenile boot camp programs, including:

- Boot camp programs should delineate specifically the programmatic features that they expect will elicit the desired changes in participant behavior.
- Boot camp programs should carefully define and select target populations in light of their goals for rehabilitation, recidivism, cost containment, and punishment.
- Aftercare, as the period during which most program attrition occurred, should be focused on, improved, and possibly restructured.
- When multiple agencies are involved with monitoring participants, the responsibilities of each agency should be spelled out in detail.

147. Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, fact sheet no. 36 Juvenile Boot Camps: Lesson Learned (June 1996) [hereinafter Boot Camp Fact Sheet].

148. Bourque et al., *supra* note 129, at 111.

149. *Id.* at 111.

- Programs should adopt consistent and continuous staff training.
- Boot camps for juveniles warrant additional study and research.[150]

In 1993, OJJDP tasked Caliber Associates to conduct an impact evaluation of these same sites utilizing data from the first 17 months of boot camp operations collected by the AIR/ICR team. The study concluded that despite debilitating operational problems, significant numbers of experimental youth were able to demonstrate important positive outcomes. Substantial improvements in academic skills were noted in Mobile and Cleveland, the two sites where educational gains were measured. Where employment records were available, a significant number of participants found jobs while in aftercare.

Despite these positive outcomes, in 2½ years of operations, none of the three boot camps appeared to have reduced recidivism. No statistical significance between boot camp youth and control youth was found in Denver and Mobile. In Cleveland, the boot camp youth evidenced a higher recidivism rate than juvenile offenders in traditional juvenile correctional facilities. The evaluators pointed out that more intensive monitoring of boot camp participants during aftercare may have increased their risk of detection, and thus recidivism, while the control youth had considerably fewer contacts with authorities following release.

Regarding cost, the findings concluded that when boot camps are used as an alternative to confinement, savings are achieved. If boot camps are used as an alternative to probation, savings are not realized. Similar to the AIR/ICR findings, the Caliber findings remain preliminary because the experiment had not run its full course when these interim reports were published. OJJDP has noted that "none of the sites fully implemented OJJDP's model juvenile boot camp guidelines, and that some critical aftercare support services were not provided."[151]

Recent State Action

Recent State action concerning boot camps for juveniles has been significant. Policymakers in Michigan enacted a law in the 1996 legislative session to create a boot camp for juveniles with the Family Independence Agency. The Juvenile Boot Camp Act provides for a 90- to 180-day term of militaristic training, academic curriculums, and counseling, followed by a 4- to 6-month period of aftercare.[152] Broad-based juvenile justice reform in Texas in 1995, which included many tough sanctions for violent juvenile offenders, allows the Texas Youth Commission to establish juvenile boot camps with physical, academic, and moral training and aftercare programs to "aid in successful community reintegration."[153]

In New Mexico, the Governor signed into law in 1995 an initiative that will provide for work camps with a concentration on occupational skills in forestry, conservation, or ranching for serious, violent offenders and plans for a 50-bed boot camp for less dangerous delinquents.[154] The juvenile justice reform initiative enacted in Oregon requires the establishment of eight regional youth accountability camps, with a focus on work and physical training, a cognitive restructuring component, and a drug and alcohol treatment phase. To qualify for the program, participants must be offenders who otherwise would have been sent to the State's training school, but are considered acceptable security risks for work and training in such camps.[155]

Some States with existing juvenile boot camp provisions expanded those services in recent legislative sessions. California changed its boot camp programs in 1995 by amending the Community Based Punishment Act of 1994 to authorize the establishment and funding of educational and vocational services for juvenile offenders. The legislation gave county-level administrators and probation officers more latitude in the maintenance of education programs in existing boot camps. Appropriations for these programs

150. *Id.* at 113–114.

151. BOOT CAMP FACT SHEET, *supra* note 147.

152. MICH. COMP. LAWS. § 400.1301 (Supp. 1996).

153. TEX. HUM. RES. CODE ANN. § 61.101 (West Supp. 1996).

154. PATRICIA TORBET ET AL., NATIONAL CENTER FOR JUVENILE JUSTICE, STATE RESPONSES TO VIOLENT JUVENILE CRIME 49 (July 1996).

155. OR. REV. STAT. §§ 420.120–420.235 (Supp. 1996).

are derived from Federal funds for juvenile crime prevention purposes and distributed through the State's Department of Youth Authority.[156] In addition, the legislation enabled the county board of supervisors to establish residential and nonresidential boot camp programs at county expense.[157]

The Louisiana legislature expanded the State's existing boot camp program to 400 beds and created a short- and long-term program based on the prior history of the youth offender and the seriousness of his or her offense. This initiative followed the establishment of a juvenile boot camp clearinghouse in the State under the jurisdiction of the Louisiana Commission on Law Enforcement and the Administration of Criminal Justice. The charge of the clearinghouse is to provide guidelines for local jurisdictions in the implementation of juvenile boot camp programs.[158]

While initiatives to expand boot camp programs for youth were undertaken in several States, a program in Maryland was terminated after less than 2 years. Established in August 1994, the Maryland juvenile boot camp served 157 youth before being closed in March 1996. The program combined military-style discipline with academic instruction. Upon release, the juveniles were placed under intensive mentoring and provided with counseling. Only nonviolent juveniles who had committed repeat offenses were eligible for the boot camp.

The program was terminated based on its inconclusive impact on juvenile recidivism. Although the program was relatively new and there were few ways to measure the effect of the boot camps on youth behavior, the acting administrator of the program estimated that 1 in 10 graduates of the boot camp had already returned to the juvenile justice system by the time the boot camp closed in March 1996. Maryland State officials report that a Baltimore County facility that deals with hardcore delinquents will benefit from funding made available by the boot camp closing and that the adult boot camp program, the Herman L. Toulson Boot Camp, will remain operational.[159]

Youth and Guns

Youth in America today have access to, are using, and are being victimized by firearms more than ever before. According to a recent report on juvenile justice legislative initiatives conducted by NCSL, deaths caused by juveniles using guns increased fourfold during the 10 years between 1984 and 1994. In addition, the heightened accessibility of large-caliber guns has increased the likelihood of a victim of an assault being seriously injured or killed as a result of a gunshot wound.[160] While a broader debate over gun control is being waged in this country, discussion concerning juveniles and firearms has centered upon handguns and the need to enact greater limitations on juveniles' ownership, possession, and use of these weapons.

States have responded to this heightened accessibility by maintaining and strengthening current laws restricting the possession, licensing, storage, and transfer of guns to juveniles and by enacting tough new laws for youth who bring guns to school. Many States also have enacted laws that allow for prosecution in adult criminal court for those juvenile offenders who allegedly perpetrate certain violent crimes with the use of a firearm.

Possession, Licensing, and Transfer of Firearms

State laws typically restrict a juvenile's possession of various firearms based on the age of the juvenile, the activity for which the gun is issued, and the juvenile's previous adjudication as delinquent, if applicable. A survey of State laws enacted through the 1994 legislative sessions found that 18 States restrict possession of handguns by youth under the age of 18. Another 14 States prohibit the possession of all firearms by persons under age 18, with various exceptions, including involvement in authorized recreational or educational

156. CAL. EDUC. CODE § 47700 (West Supp. 1997).

157. CAL. WELF. & INST. CODE § 940 (West Supp. 1996).

158. LA. REV. STAT. ANN. § 15:1202 (West Supp. 1996).

159. *Arizona*, *supra* note 141.

160. NCSL LEGISLATOR'S GUIDE, *supra* note 33, at Emerging Issues.

activities or participation in firearm safety courses.[161] In 1994, the State of Maine enacted a law that allows youth more than 10 years of age to possess firearms when hunting if they are accompanied by a parent or another adult approved by a parent or guardian.[162]

Adjudicated delinquents are prevented from possessing firearms in 22 States, with restrictions usually placed on those youth who were adjudicated delinquent for acts that would be considered felonious offenses if they had been committed by an adult. Other States prohibit possession of a firearm for a specific period of time (usually 10 years) after an offender's adjudication or release from juvenile detention, while other possession restrictions remain in place until the Governor or a court orders the restoration of the right to possess a firearm.[163] Still other measures, including 1994 enactments in Arizona and Delaware, provide an enhanced penalty for juveniles previously adjudicated delinquent if they are found in possession of a firearm.[164]

Restricting licensing and imposing liability for the transfer—by sale, gift, or loan—of a firearm to a youth are other tactics States have used to keep firearms out of the hands of children. At least 35 States regulate the age at which a person may obtain a license to carry certain types of firearms, while 43 prohibit the transfer of firearms to minors, with specific exceptions. Many of these latter States' laws allow for enhanced penalties when an individual is found guilty of more than one transfer offense.[165]

Some States have taken action to hold parents liable when youth gain access to a family firearm. These types of "safe storage" or "child access prevention" laws have been enacted with increasing frequency in recent State legislative sessions in an effort to promote accountability when family firearms are not stored securely. According to a legislative analysis compiled by Handgun Control, Inc., 13 States in 1995—Arizona, Georgia, Hawaii, Indiana, Missouri, New Hampshire, New Mexico, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, and Washington—had enacted legislation of this sort.[166]

Gun-Free Schools and Transfer Provisions

The creation of "gun-free schools" and "safety zones" are yet other ways States have, in recent years, protected children, teachers, and school staff from gun violence on school grounds. Statistics compiled by the National Center for Education in Maternal and Child Health indicate that gun violence on school grounds has become increasingly prevalent and disruptive. Examples of these statistics include:

- The number of guns confiscated in California public schools doubled from 1985 to 1988. High schools experienced the greatest increase in the number of confiscations, but more guns were found at all grade levels, including elementary school.
- In a national survey conducted in the late 1980's, one of every thirty-six 10th-grade boys said they had carried a handgun to school in the past year. One in every one hundred boys brought that gun to school every day. In one U.S. city, one out of every fifteen 11th-grade boys had carried a handgun to school at some point.
- In a survey of 10 high schools in four States, 15 percent of inner-city high school students said they were scared at school almost all the time.[167]

A State survey of laws affecting juvenile access to firearms identified several types of statutes under which weapons possession in schools or safety zones is criminalized. The most common type of statute, in place in at least 33 States, prohibits the possession of a weapon on school property or in a safety zone and provides punishments for violations whether or not the offender knowingly possesses the weapon in that restricted area.[168] As a result of legislative action taken in the 1995 session, such a statute recently was enacted in Tennessee, where students are prohibited from possessing unauthorized firearms on

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161. MODEL HANDGUN CODE, *supra* note 79, at 33.

162. ME. REV. STAT. ANN. tit. 12, § 7107-A (West Supp. 1996).

163. MODEL HANDGUN CODE, *supra* note 79, at 33.

164. *Id.* at 35.

165. *Id.* at 35–36.

166. *1995: The First 6 Months*, THE MONITOR OF FEDERAL AND STATE GUN CONTROL LEGISLATION (Handgun Control, Inc., Washington, D.C.), July 1995, at 2.

167. NATIONAL CENTER FOR EDUCATION IN MATERNAL AND CHILD HEALTH, FIREARM FACTS (Laurie Duker ed., n.d.).

168. MODEL HANDGUN CODE, *supra* note 79, at 37.

school property. Policymakers in Delaware in that same year created the crime of "possession of a weapon in a safe-school recreation zone," which forbids possessing a firearm on or within 1,000 feet of school property and school vehicles.[169] Other laws that restrict the use of guns on school property or within a safety zone include punishing the knowing possession of a firearm on school property or in a safety zone, punishing those who intend to use firearms on school property, and prohibiting the discharge or attempted discharge of a firearm on school grounds or in a safety zone.[170]

Penalties for violation of a gun-free school provision are varied. A popular sanction in the past 2 years includes suspension or expulsion of a student for possessing weapons on school grounds. A majority of the States' laws—19 of which were enacted in 1995—mandate expulsion of a student found carrying a weapon on school property.[171] For example, the State of Washington passed a law in 1995 that requires a 1-year expulsion of students who have been found possessing a firearm on elementary or secondary school premises,[172] while a similar law enacted by policymakers in Oregon in 1996 mandates expulsion for a year when students bring, use, or possess weapons at school or at interscholastic activities or events.[173] A new law in Illinois provides that a student suspended from school for various acts of delinquency, including possession of a weapon, shall not be permitted to transfer to or attend classes at another school in the district until the term of the suspension or expulsion expires.[174]

Other punishments include suspending the driver's permit of a youth found in violation of a gun-free school zone law. In at least seven States—Alabama, Arkansas, Georgia, Minnesota, Nevada, Rhode Island, and Utah—a youth may have his or her driver's license suspended if found possessing a firearm on school grounds.[175]

It should be noted that statutes of this type generally have several exceptions or defenses to prosecution. The most common exceptions are for government agents, students, and staff who are participating in lawful, educational activities. Other exceptions include an individual possessing a firearm with special permission from school authorities, an individual who has a firearm that is safely secured in a motor vehicle that is on school property, an individual who is on private property within the safety zone, an individual who is hunting lawfully, and an individual who has a valid permit to possess a firearm.[176]

Another popular sanction in recent years allows juveniles to be transferred to criminal court when suspected of committing certain serious and violent acts with a gun. Although every State provides some mechanism for children to be transferred to criminal court for habitually perpetrating crimes or committing specific crimes of violence, several States allow juveniles to be tried in adult court for committing weapons offenses as well. For example, a 1995 law in Nevada allows 14-year-old youth who commit an offense that would be considered a felony if committed by an adult to be transferred to an adult criminal court jurisdiction if the offense in question involved the use or threatened use of a deadly weapon.[177] In Indiana, Mississippi, and Oregon, a youth must be prosecuted as an adult if he or she violates a firearm law, while laws in Arkansas, Kansas, and the District of Columbia allow for the transfer of juveniles of statutorily specified ages to be transferred to adult criminal court for violating gun-free school zones.[178]

Finally, some States are trying to encourage youth to surrender their weapons in an effort to get guns off the streets. A 1996 law in New York creates immunity from prosecution for unlawful possession of a firearm when an individual voluntarily surrenders the weapon to the superintendent of the State police or a designee.[179]

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169. *1995: The First 6 Months*, *supra* note 166, at 9, 15.

170. MODEL HANDGUN CODE, *supra* note 79, at 37.

171. NCSL LEGISLATOR'S GUIDE, *supra* note 33, at Emerging Issues.

172. *1995: The First 6 Months*, *supra* note 166, at 16.

173. OR. REV. STAT. § 339.115 (Supp. 1996).

174. 105 ILL. COMP. STAT. 5/2-3 to -13a (West 1996).

175. MODEL HANDGUN CODE, *supra* note 79, at 37.

176. *Id.* at 38.

177. NEV. REV. STAT. § 62.080 (Supp. 1996).

178. MODEL HANDGUN CODE, *supra* note 79, at 38.

179. N.Y. PENAL LAW § 265.20 (McKinney Supp. 1997).

Juvenile Proceedings and Records

Until recently, State laws and judicial norms were established with the understanding that the preservation of the privacy of juveniles adjudicated in the juvenile court is a critical component of the youth's rehabilitation. Today, however, in the face of increasing public concerns over juvenile crime and violence, government agencies, school officials, the public, and victims are seeking more information about juvenile offenders. An increasing number of States are responding to this need by allowing public access to and victim participation in juvenile proceedings, broadening access to juvenile records, fingerprinting and photographing delinquent youth, and altering expungement laws for juvenile records.

The establishment of protective measures for guarding the privacy of youth offenders can be traced back to the separation of juvenile courts from criminal court systems. When the first juvenile court was created in Chicago, IL, in 1899, it was designed to "spare juveniles from harsh proceedings of adult court, punitive and unseemly conditions of adult jails and penitentiaries, and the stigma of being branded 'criminal,'" according to an article by Tamryn J. Etten and Robert F. Petrone in the *Juvenile and Family Court Journal*.[180] This new system of juvenile justice administration was designed to be less punitive and more therapeutic than the adult system and included the idea of keeping juvenile proceedings and records private.

As States began to establish separate juvenile court systems, much of the original enabling legislation did not include specific provisions for protecting the confidentiality of juvenile court proceedings or records. However, confidentiality was practiced by most early juvenile courts, where it was deemed unfair to label a juvenile as a criminal because such a characterization would inhibit a youth's rehabilitation.[181]

However, with juvenile crime becoming more prevalent and increasingly violent, State policymakers have felt pressure to enact laws that emphasize juvenile accountability for the commission of violent offenses. According to a recent report by NCJJ, the juvenile court's focus on the rehabilitation and protection of minors from public exposure was not problematic when the indiscretions committed by these youth were of a less serious nature. However, as juvenile crime has become more violent, community protection and the public's right to know has begun to displace confidentiality and privacy issues as an underpinning in the juvenile court system.[182]

The movement toward expanding the rights of victims in both the criminal and juvenile justice systems and establishing some form of "restorative justice" has spurred States to expand the role of victims in the adjudication of their offenders. Currently, 29 States have victim bill of rights amendments to their State constitutions. Voters in eight States—Connecticut, Indiana, Nevada, North Carolina, Oklahoma, Oregon, South Carolina, and Virginia—adopted their provisions during the November 1996 elections.[183]

State initiatives have also specifically addressed bills of rights for victims of juvenile crime. According to NCJJ, Alabama and Arizona each established a victim bill of rights in 1995 to apply expressly to victims of juvenile crime. In that same year, Idaho and Utah included victims of juvenile crime in existing victim bill of rights amendments.[184]

Even with significant legislative activity resulting in more access to juvenile proceedings and records, it is important to note that substantial legal barriers exist that restrict the sharing of information on juvenile offenders between and among agencies in the absence of some type of enabling legislation. Most agencies that maintain records on juveniles must comply with a variety of Federal and State statutes, local ordinances, resolutions, regulations, court orders, and legal opinions in formulating policies for the collection and dissemination of records information, according to Etten and Petrone. Despite the complexity of these various confidentiality mandates, courts on both the

180. Tamryn J. Etten & Robert F. Petrone, *Sharing Data and Information in Juvenile Justice: Legal, Ethical, and Practical Considerations*, JUV. & FAM. CT. 65–89 (1994).

181. *Id.*

182. TORBET ET AL., *supra* note 154, at 53.

183. Memorandum from Jim Turpin, American Correctional Association, to Interested Parties (Nov. 13, 1996) (on file with author).

184. TORBET ET AL., *supra* note 154, at 72–75.

Federal and State levels have held that there is no constitutional confidentiality right for an alleged or adjudicated delinquent. Rather, in challenges brought in the past 25 years, the courts have disregarded the confidentiality provision when it impedes the constitutional rights of another.[185]

Juvenile Proceedings

Recent State legislative activity indicates that expanding victim participation in the juvenile justice system is an important policy issue across the country, as 16 States have enacted legislation broadening victims' roles in juvenile proceedings in the past 2 years.[186] Action on this front includes opening the courtroom to victims during juvenile hearings and informing victims of adjudicatory proceedings. For example, legislation enacted in South Dakota in 1996 allows a judge to open the courtroom to victims if the offense committed by a juvenile would be a crime of violence if committed by an adult. The law also requires the State's attorney to notify the victim of the time and place of hearings involving the alleged delinquent offender.[187] A recent initiative in Nevada requires the judge to consider the interests of the victim when deciding to close juvenile proceedings for youth charged with committing certain violent crimes.[188] A similar measure in Indiana additionally mandates that a judge consider the nature of the allegation, and the age and maturity of youth victims, when deciding whether to close a proceeding.[189]

Some States have gone beyond notification provisions to allow victims to become active participants in juvenile proceedings. For example, a provision in Arizona's bill of rights for victims of juvenile crime allows victims to be present and heard at any predisposition or disposition proceeding. Victims also are allowed to present to probation officials an impact statement outlining the effect that the juvenile's crime has had on the victim and the victim's immediate family.[190]

Expanding juvenile court access to the public is yet another approach States are using to make youth accountable for the crimes they commit. Currently, at least 21 States require or permit the court to open juvenile proceedings if the youth involved are charged with serious or violent offenses or if the juveniles are repeat offenders.[191] The State of Georgia enacted a provision of this sort in 1995 when the State legislature voted to open juvenile courtrooms to the public for the first time. The new law allows the general public admission to adjudicatory hearings for youth accused of committing acts that would be felonies if committed by adults or youth who have previously been adjudicated delinquent. The provision also requires written notice to school officials of such adjudicatory proceedings.[192]

Inherent in this shift of thinking is the idea that juveniles should be held accountable when their criminal behavior has an impact on the community as a whole. According to the American Prosecutors Research Institute (APRI), "The public has the right to know the identities of serious, violent, and habitual offenders who commit crimes in their communities . . . the opening of juvenile court proceedings in these cases will ensure greater accountability for the juvenile offender and the process [as] a whole."[193]

Although the public historically has been denied access to juvenile courts, longstanding support has existed for media access on the condition that the names and identities of the juvenile offenders remain confidential. According to a statement published by the Children's Bureau in 1954, judges who use their discretion to decide who will be admitted to the courtroom should include members of the press. "If the juvenile courts are to function efficiently, their philosophy and practice ought to be known."[194]

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185. Etten & Petrone, *supra* note 180, at 48.

186. *Id.* at 72–75.

187. S.D. Codified Laws §§ 26–7A–36, –36.1 (Michie Supp. 1996).

188. Nev. Rev. Stat. § 62.193 (Supp. 1996).

189. Ind. Code Ann. § 31–6–7–10 (West Supp. 1996).

190. Ariz. Rev. Stat. Ann. § 8–290.01 (West Supp. 1996).

191. Torbet Et Al., *supra* note 154, at 55.

192. Ga. Code Ann. § 15–11–28 (Supp. 1996).

193. American Prosecutors Research Institute, Prosecutors' Policy Recommendations on Serious, Violent, and Habitual Youthful Offenders 22 (1996) [hereinafter APRI].

194. Richard D. Hendrickson, *Media Access to Juvenile Court: An Update*, Juv. & Fam. Ct. J. 27, 34 (1993) (citations omitted).

More recent support for media access to the juvenile court is outlined in a 1992 report on the role of the juvenile court judge in juvenile justice administration. Commissioned by the National Council of Juvenile and Family Court Judges (NCJFCJ), the report encourages judges to admit the media to juvenile proceedings to elicit community support for the services provided by the juvenile court. "Because of the confidentiality laws which restrict the flow of information about most juvenile court cases, it is critical that the juvenile court judge ensure that information about the juvenile court system is made available to the public," according to the NCJFCJ report. "Only in this way will the public receive a balanced view of the work of the juvenile court and not rely solely on the spectacular headlines which appear at regular intervals."[195]

Although States have enacted laws to allow media access to juvenile proceedings, the U.S. Supreme Court has held that the courts should retain discretion in this determination, based upon characteristics of an individual case. The U.S. Supreme Court recently refused to hear an appeal in *United States* v. *Three Juveniles*,[196] in which the U.S. Court of Appeals for the First Circuit upheld a U.S. district court judge's restriction of media access to proceedings in which three juveniles were being tried for committing a hate crime. The refusal to hear the case let the First Circuit's decision stand, allowing judges to retain jurisdiction to determine if and when protecting the privacy of a minor during delinquency proceedings will serve the broader public interest of furthering the juvenile's rehabilitation.

United States v. *Three Juveniles* arose when the government charged three youth with civil rights violations after they allegedly conspired to impinge upon the civil rights of Jews and African-Americans living in the Brockton and Randolph, MA, areas. The three, initially prosecuted in 1994 under a Federal hate crime statute, purportedly had been members of a white supremacy skinhead group called the New Dawn Hammerskins.

Before the juveniles were arraigned, *The Boston Globe* intervened in an attempt to gain access to the proceedings and court documents filed in the case. Although the district court allowed the newspaper limited access to some documents, the court denied its request for admittance to the proceedings. The court reasoned that the Federal Juvenile Delinquency Code[197] required the closure of a Federal juvenile delinquency proceeding if a juvenile is amenable to rehabilitation and has no prior criminal or juvenile delinquency record and if the case has not been transferred to adult criminal court.

The Globe appealed the decision, arguing that the public right of access to the proceedings was guaranteed by the First Amendment of the U.S. Constitution. *The Globe* also contended that the court's reason for closing the proceedings was not sufficiently articulated.

The First Circuit determined there was not a need to address *The Globe's* first amendment argument because the case could be resolved by considering the law's statutory intent and provisions. Although the court noted that an essential element of the Federal code is the "[p]rotection of the juvenile from the stigma of a criminal record by preserving the confidentiality of proceedings,"[198] it concluded that several provisions of the law, when read as a whole, show that Congress did not intend to require that all proceedings be fully closed. While various provisions of the law do not require closure, they do authorize courts to protect a juvenile's confidentiality either by closing proceedings or through some other means, according to the court.

The court rejected *The Globe's* argument that the logic behind the trial court's decision to close the court proceedings was not sufficiently articulated. The appellate court noted that the district court had stated that the "overarching objective" of the juvenile court was to protect juveniles from a negative social stigma in order to facilitate rehabilitation and that the youth in this case would likely be responsive to that rehabilitative effort.

Juvenile Records

Juvenile records typically reflect both the legal and social history of a youth, based on the juvenile's contact

195. *Id.*

196. United States v. Three Juveniles, 61 F.3d 86 (1st Cir. 1995).

197. Codified at 18 U.S.C. § 5031 et seq.

198. Three Juveniles, 61 F.3d at 90.

with various State and local agencies and service providers. Social history records often include information about a youth's family and academic records and any history of abuse or neglect or problems with drug and alcohol use. Legal records, on the other hand, contain information relating to court proceedings involving the juvenile and information introduced and used as evidence. These records include petitions, complaints, motions, court findings, and court orders. Legal and social history records are kept private by various Federal and State laws, which traditionally have inhibited the exchange of such information between and among agencies charged with administering policies that affect children, according to APRI.[199]

Recent State action has recognized that many agencies that serve children may be better equipped to do so if provided with comprehensive access to a youth's records. According to a recent article from the *Juvenile and Family Court Journal*, agencies charged with the implementation of juvenile justice and children and family services often have common objectives, and these objectives yield a need for common information.[200] Policy initiatives that support this idea include expanding access to juvenile records to youth corrections personnel, to courts, and to other State agencies and school officials in some cases.

Some States, in response to a growing number of crimes committed by repeat youth offenders, have created a collaborative, systematic approach to information sharing. One example is the Serious Habitual Offender Comprehensive Action Program (SHOCAP). Originally developed by OJJDP,

SHOCAP in Brief

Several longitudinal studies conducted by OJJDP have found that most violent and serious juvenile crime is committed by a minority of offenders. For example, the ongoing OJJDP Program of Research on the Causes and Correlates of Delinquency study in three communities (Denver, CO; Rochester, NY; and Pittsburgh, PA) has found that about one-sixth of all juvenile offenders in the study communities are accounting for more than three-fourths of all violent offenses.[201]

Efforts in the past decade to deal with these serious, violent, and chronic offenders led OJJDP to develop the SHOCAP model as a tool for communities to identify their most dangerous and violent juvenile offenders while focusing community resources on immediate intervention or detention when they reoffend.[202]

Traditionally, agencies charged with the administration of juvenile justice have been reluctant to share information on individual cases with other agencies, which reflects the juvenile justice system's focus on rehabilitation in contrast with the adult system's punishment and incapacitation model. Although many States have eased the legal barriers to exchanging information on juveniles, many internal and informal barriers exist, as agencies often refuse to trust other agencies.

One of the goals of SHOCAP is to encourage agencies to share information with those with "a need to know," such as prosecutors, probation, corrections, social service and law enforcement agencies, and education institutions. By sharing information, these agencies can coordinate reform efforts and develop more thorough, structured strategies for dealing with the habitual offenders.[203]

Another byproduct of local SHOCAP agreements is the establishment of more organized and useful records. By having standards for recording information, those shared documents are more likely to be readily useful to a variety of agencies and less likely to contain gaps in information.

Both serious habitual offenders and juveniles identified as on pathways to becoming serious habitual offenders (pre-SHO's) can be recognized and provided with appropriate services when they are identified as such in a standardized, meaningful way for all agencies working to help youth. An OJJDP Fact Sheet on SHOCAP notes that, "The program prevents youth from falling through the cracks by ensuring that their case information is available immediately for juvenile justice decisionmakers." This also helps in targeting intervention initiatives for youth at risk of becoming serious habitual offenders.[204]

199. APRI, *supra* note 193, at 23.

200. Etten & Petrone, *supra* note 180, at 67.

201. Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, Fact Sheet No. 35 Serious Habitual Offender Comprehensive Action Program (August 1996) [hereinafter Fact Sheet No. 35].

202. *Id.*

203. APRI, *supra* note 193, at 23.

204. Fact Sheet No. 35, *supra* note 201.

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SHOCAP facilitates agency collaboration and information sharing to provide the most relevant sanction, treatment, or intervention for serious habitual offenders. Since the first SHOCAP programs were established in the late 1980's, several States, including California, Florida, Illinois, Oklahoma, and Virginia, have enacted SHOCAP legislation to expand access to relevant data and information collected on juvenile offenders by State and local agencies.

Other States have altered juvenile recordkeeping procedures by providing school officials with access to juvenile records so that they can handle the misbehavior of individual youth and preserve the safety of faculty and students in the best way. An initiative in California encourages information sharing among law enforcement, juvenile courts, and schools to determine the most appropriate sanction or rehabilitation option for youth offenders. The law amended another section of the California code to ensure that dissemination of this information is limited and used only to appropriately serve students, educators, and employees charged with the administration of juvenile justice in the State.[205] A new law in Wisconsin allows school officials to disclose information about an adjudicated youth to anyone determined by the local school board to have a safety interest in obtaining that information.[206]

Other recent initiatives provide agencies charged with the administration of juvenile justice and youth programs with access to juvenile records. A 1995 Illinois amendment allows child protection investigators of the State's Department of Children and Family Services to inspect and copy police records of minors.[207] Since 1995, Connecticut has provided court officials, the adult probation office, the parole board, and the bail commission with limited access to juvenile records.[208]

Increased access to juvenile records by the public and victims is yet another tactic that States are using to facilitate accountability for juvenile offenders. A New Hampshire law, enacted in 1995, opens records of juveniles adjudicated delinquent for violent crimes, while an initiative in Wyoming allows the court or prosecuting attorney to release the name, offense record, or disposition of a minor in any delinquency proceeding filed in juvenile court to the victim or members of a victim's immediate family.[209]

Other Administrative Responses

States have also facilitated access to juvenile records by changing the administrative processes governing juvenile records—loosening rules on their collection, centralizing their maintenance, and limiting their disposal. Policy initiatives of this sort include holding juvenile records in a central repository, fingerprinting and photographing juveniles, making changes to expungement and sealing laws, and expanding access to juvenile records.

Holding juvenile records in a central location or repository makes relevant information about juvenile offenders more easily available to law enforcement and criminal and juvenile justice officials across the State. Central repositories may include adult records only, adult records separate from juvenile offenders, or adult and juvenile records combined.[210]

In 1994, 27 States permitted the inclusion of juvenile arrest and/or court disposition records in central record repositories. Four of these States—Hawaii, Mississippi, Oklahoma, and Virginia—authorized a separate juvenile record center. In some States, criminal history records for juveniles tried as adults may be stored in the central repository, with fingerprints serving as the basis for the records.[211]

Fingerprinting juvenile arrestees also has become more common in recent years. According to an NIJ Research in Brief, fingerprinting is a useful tool for State agencies charged with recordkeeping to ensure that records accurately identify a specific juvenile. Recent amendments and changes make fingerprinting provisions more available to law enforcement by lowering the age threshold or adding to the types of offenses for which the practice is acceptable. The authorization to fingerprint, however, does

205. CAL. WELF. & INST. CODE §§ 827, 828.1 (West Supp. 1996).

206. WIS. STAT. ANN. § 118.127(3) (West Supp. 1996).

207. 705 COMP. STAT. ANN. § 405/1–7 (West Supp. 1996).

208. CONN. GEN. STAT. § 54–76*l* (West Supp. 1996).

209. LYONS, *supra* note 111, at 12.

210. TORBET ET AL., *supra* note 154, at 60.

211. *Id.* at 61.

not usually apply to all arrested juveniles. For example, New York allows youth to be fingerprinted as young as age 11. More common age thresholds, according to the NIJ document, begin at 14 in other States.[212] As of 1995, 48 States authorized law enforcement agencies to fingerprint arrested juveniles.[213]

The types of crimes for which fingerprinting of juveniles is allowed vary by State but most often include serious offenses and felonies. Iowa, Oregon, and Washington, however, have permitted the fingerprinting of juveniles arrested for some misdemeanors.[214] A 1995 amendment in Pennsylvania broadened the existing fingerprinting law to allow the fingerprinting of youth who have allegedly committed misdemeanors. Previously, the Pennsylvania law limited fingerprinting of juveniles to youth who allegedly had committed felonies and firearms offenses.[215]

Several States have added laws that require photographs of an alleged delinquent juvenile to be taken with their fingerprints at the time of arrest. Since 1995, Ohio has allowed fingerprinting of juveniles ages 14 or over who have been accused of committing crimes that would be felonies if perpetrated by adults.[216] A similar measure in North Dakota allows law enforcement officials to photograph juveniles arrested for various crimes, including murder, sexual assault, theft, or the unlawful possession or use of a handgun. Prosecutors also may request that the photograph of the alleged delinquent be taken and stored in the juvenile record if the youth commits a misdemeanor at the direction of a criminal street gang.[217]

Sharing access to juvenile records with adult criminal courts has promoted information accessibility, with the hope of encouraging the appropriate sanction for youth offenders. According to the NIJ document, every State gives a prosecutor or court access to juvenile records of adult defendants at some point in the judicial process. States achieve this end in different ways: by providing for prosecutor access explicitly in State code; by prescribing the inclusion of juvenile records in reports filed by the court; or by authorizing or requiring the court to consider a defendant's juvenile record when setting a sentence.[218]

Many of the changes to juvenile recordkeeping procedures have been coupled with changes to the sealing and expungement of juvenile records. Expungement laws allow for the erasure or destruction of juvenile records once a juvenile reaches the age of majority, whereas sealing records removes them from review or examination except by court order or by designated officials. Currently, all States have some laws on the books ordering the expungement or sealing of records for certain juvenile offenders, based upon their age or the gravity of their crimes.[219] To expand access to juvenile records, States have moved to restrict the expungement or sealing of juvenile records or forbid entirely those restrictions on information about youth adjudicated delinquent. A recent example comes from North Carolina, where in 1994 a law was passed that forbids the expungement of the court records for youth adjudicated delinquent for certain violent felonies or for repeat offenders.[220]

Juvenile Transfer to Criminal Court

Over the past 20 years, States have significantly expanded legislation allowing for prosecution of juveniles in adult criminal court. This trend has increased in recent years to permit transfer to adult court at

212. NEAL MILLER, NATIONAL INSTITUTE OF JUSTICE, U.S. DEP'T OF JUSTICE, STATE LAWS ON PROSECUTORS' AND JUDGES' USE OF JUVENILE RECORDS 2 (Nov. 1995) [hereinafter MILLER, STATE LAWS].

213. TORBET ET AL., *supra* note 154, at 61. According to a recent report by NCSL, Hawaii enacted juvenile fingerprinting legislation in 1995. This change brings the total number of States with juvenile fingerprinting provisions to 48, up from the 47 States listed in the NCJJ report.

214. MILLER, STATE LAWS, *supra* note 212, at 3.

215. 42 PA. CONS. STAT. ANN. § 6341 (West 1995).

216. OHIO REV. CODE ANN. § 2151.313 (Banks-Baldwin Supp. 1995).

217. N.D. CENT. CODE § 27–20–56 (Supp. 1995).

218. MILLER, STATE LAWS, *supra* note 212.

219. *Id.* at 15–16.

220. N.C. GEN. STAT. § 7A–676 (1995).

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lower ages and for more offenses.[221] According to NCSL, 17 States in 1995 further expanded or amended their waiver statutes.[222]

Today, all 50 States and the District of Columbia *allow for juvenile prosecution in criminal court by* one or more transfer mechanisms, according to GAO.[223] The most common mechanism is judicial waiver, which gives juvenile court judges discretion to waive juvenile cases to adult criminal court. Other transfer mechanisms include direct file, which provides prosecutorial discretion to file criminal charges against juveniles directly in criminal court, and statutory exclusion, which mandates juvenile prosecution in adult court.[224]

The widespread enactment of legislation enhancing juvenile exposure to criminal prosecution is a direct response to reported escalations of juvenile violent crime in recent years. According to OJJDP, the number of serious crimes, such as murder and aggravated assault, committed by juveniles increased 68 percent from 1988 to 1992.[225] Despite recent declines, these rates may worsen, according to reports cited by the Campaign for an Effective Crime Policy (CECP), which predicts that juvenile violent offenses will continue to rise as the number of youth ages 14 to 17 increases 20 percent by the year 2005.[226]

The dramatic expansion in transfer legislation is based on the premise that some offenses warrant criminal prosecution and some juveniles are beyond rehabilitation. Consequently, State legislation emphasizing accountability by violent juvenile offenders focuses on transferring serious, violent juvenile offenders and habitual offenders, according to GAO.[227]

The impact of recent legislation providing for enhanced transfer is unclear. Less than 2 percent of all formal juvenile delinquency cases were judicially waived each year from 1988 to 1992. In 1988, only 1.2 percent of all cases were waived to adult criminal court, or 7,005 of 569,596 cases. The number of judicially waived cases steadily climbed to 11,748 of 743,673 cases in 1992, to comprise 1.6 percent of all cases.[228]

Of the small number of juvenile cases waived to criminal court, more nonviolent offenders were waived than violent offenders. Nonviolent offenders comprised 66 percent of all juveniles waived to adult court in 1992, according to GAO.[229] CECP reports that nonviolent offenders represented 57 percent of all cases waived in 1993.[230]

These statistics do not include juvenile transfers to criminal court via a prosecutor's exercise of concurrent jurisdiction (direct file) authority and statutory exclusion. It is unlikely that the above-mentioned statistics would change significantly, however, given a recent GAO survey indicating that judicial waiver accounts for the majority of juveniles prosecuted in adult court.[231] Nor do these statistics include waivers made pursuant to recent expansions of transfer legislation. Clearly, additional studies are needed to determine whether this expansive transfer legislation has led to increased juvenile criminal prosecution of serious, violent, and repeat juvenile offenders.

In addition, more analysis needs to focus on the impact of juvenile criminal prosecution. The current data, including results from studies in Idaho, New Jersey, and New York, indicate that expanded transfer provisions over the past 20 years have not deterred juvenile crime. Separate studies in Florida and Minnesota confirm that juveniles transferred to adult criminal court have higher recidivism rates than juvenile offenders retained in juvenile court.[232]

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221. TORBET, *supra* note 154; CAMPAIGN FOR AN EFFECTIVE CRIME POLICY, PUBLIC POLICY REPORTS: A SERIES OF REPORTS ON MAJOR ISSUES IN CRIMINAL JUSTICE: THE VIOLENT JUVENILE OFFENDER: POLICY PERSPECTIVE 5 (July 1996) [hereinafter CAMPAIGN].

222. LYONS, *supra* note 111, at 3, 13–14.

223. U.S. GENERAL ACCOUNTING OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, JUVENILE JUSTICE: JUVENILES PROCESSED IN CRIMINAL COURT AND CASE DISPOSITIONS 1 (Aug. 1995) [hereinafter GAO TRANSFER].

224. CAMPAIGN, *supra*, note 221, at 5.

225. GAO TRANSFER, *supra* note 223, at 1 (citations omitted).

226. CAMPAIGN, *supra* note 221, at 2.

227. GAO TRANSFER, *supra* note 223, at 7.

228. *Id.* at 2. The fractional rise from 1.2 to 1.6 percent represents an increase of 33 percent from 1988 to 1992.

229. *Id.* at 11.

230. CAMPAIGN, *supra* note 221, at 5.

231. GAO TRANSFER, *supra* note 223, at 20.

232. CAMPAIGN, *supra* note 221, at 6.

For example, a study reported by CECP that analyzed recidivism rates of juveniles prosecuted in Florida criminal courts found that juveniles prosecuted as adults were more likely to commit additional crimes and more serious offenses upon release than their counterparts adjudicated in juvenile court.[233]

Moreover, studies report conflicting findings on whether juveniles receive harsher or longer sentences in adult court.[234] Thus, it is not clear whether transfer policies are serving their intended goal of enhancing punishment and deterring recidivism.

Types of Juvenile Transfers

Judicial waiver, statutory exclusion, and direct file are three mechanisms used to transfer juvenile offenders to adult court. Judicial waiver is the most popular method; 47 States and the District of Columbia provide judicial discretion to waive certain juveniles to criminal court. Thirty-seven States and the District of Columbia have one or more statutory exclusion provisions, and 10 States and the District of Columbia have direct file provisions.[235]

Other mechanisms to enhance juvenile transfers to adult criminal court include presumptive waiver, which mandates juvenile transfer unless the juvenile offender can prove he or she is suited to juvenile justice system rehabilitation. Usually the State bears the burden of proof to show that a juvenile should be transferred to adult court. Presumptive waiver shifts the burden of proof to the juvenile to show that he or she should not be transferred. Twelve States and the District of Columbia provide for presumptive waiver in certain instances, such as serious felonies, according to NCJJ and the Institute for Law and Justice (ILJ). NCJJ reports that nine of these jurisdictions have enacted their statutes since 1992. ILJ reports that New Jersey relies solely on presumptive waiver.[236]

Eighteen States have enacted "once waived, always waived" legislation, under which a juvenile once waived to adult court subsequently must be charged in criminal court regardless of the offense. For example, in Virginia, any juvenile previously convicted as an adult is excluded from juvenile court jurisdiction.[237] In addition, 10 States permit and 12 States mandate a judge to order waiver in circumstances in which the offender previously has been adjudicated delinquent.[238]

Regardless of the statute, prosecutors maintain a critical role in determining the forum of prosecution. In addition to direct file legislation, prosecutors may charge a youth with an offense mandating statutory exclusion and transfer to adult court. NCJJ observed that prosecutorial discretion in the absence of guidelines for the exercise of that discretion can result in inconsistent treatment of juvenile offenders and urged legislation providing uniform prosecutorial guidelines.[239] NCJJ notes that a 1995 Utah State court decision found unconstitutional the State's direct file legislation on the basis that the legislation infringed on a State constitutional provision guaranteeing the uniform operation of State law.[240]

In addition, several States provide statutory measures for ameliorating the consequences of waiver and transfer decisions. For example, 22 States allow criminal court judges to return statutorily excluded or direct-filed cases to juvenile court, which accounts for more than 40 percent of the States that exclude youth from juvenile court or direct file juveniles to adult court, according to NCJJ.[241] In addition, 17 States authorize criminal courts to review juvenile court waiver decisions and/or prosecutorial direct filings, according to ILJ.[242]

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233. *Id.* at introduction, p. 6.

234. TORBET ET AL., *supra* note 154, at 11.

235. GAO TRANSFER, *supra* note 223, at 21.

236. NEAL MILLER, INSTITUTE FOR LAW AND JUSTICE, JUDICIAL WAIVER AND ITS ALTERNATIVES: A LEGAL FACT SHEET (DRAFT REPORT) 2 (Oct. 18, 1996) [hereinafter MILLER, JUDICIAL WAIVER]; TORBET ET. AL., *supra* note 154, at 8.

237. GAO TRANSFER, *supra* note 223, at 17.

238. MODEL HANDGUN CODE, *supra* note 79, at 38.

239. TORBET ET AL.,*supra* note 154, at 12.

240. *Id.* (citing State v. Mohi, 901 P.2d 991 (Utah 1995)).

241. *Id.* at 8.

242. MILLER, JUDICIAL WAIVER, *supra* note 236, at 4.

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Transfer Provisions and Trends

State policymakers designate different ages at which individuals no longer may be adjudicated delinquent in juvenile court. For example, original juvenile court jurisdiction extends through age 17 in 37 States and the District of Columbia, age 16 in 10 States, and age 15 in 3 States.[243] Beyond those ages, individuals are deemed to be adults and must be held criminally responsible for their actions and prosecuted in criminal court.

Juvenile court judges may weigh a variety of factors in determining whether to waive juveniles under their jurisdiction to adult court. All States have incorporated the constitutionally required factors enumerated by the U.S. Supreme Court.[244] These factors include the seriousness of the alleged offense and the need to protect the community; whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; whether the alleged offense was against a person or property; the prosecutive merit of the complaint; whether the juvenile's associates will be tried in adult criminal court; the juvenile's sophistication, maturity, record, and previous history; and the reasonable likelihood of rehabilitation.[245]

Legislators have expanded transfer provisions by providing or mandating transfer for certain offenders based on offense and age. During the past 4 years, 24 States added crimes for which juveniles can be criminally prosecuted, and 6 States lowered the minimum age for transfer to 14.[246]

Many of these State provisions mandate or allow transfer of those juveniles charged with any conduct that would constitute a felony if committed by an adult. Thirteen States mandate and four States permit this type of transfer for juveniles 16 and older. Mandatory transfer provisions also apply to certain offenders age 14 and older in Connecticut, Idaho, the Virgin Islands, and West Virginia, and age 13 and older in New York. Discretionary transfers apply to offenders as young as age 10 in South Dakota and Vermont.[247]

Alarmed by reports that gun homicides have nearly tripled since 1983,[248] several States have enacted transfer provisions for juveniles who commit offenses with firearms. In Indiana, Mississippi, and Oregon, juveniles who violate certain firearms laws must be prosecuted as adults. Illinois mandates criminal prosecution of juveniles age 15 and older who violate the State's gun-free-school-zone laws. A juvenile age 14 or older in Arkansas, age 16 or older in Kansas, and under age 18 in the District of Columbia may be transferred to adult criminal court for a violation of those jurisdictions' weapon-free-school-zone laws.[249]

Some legislatures require any juvenile, regardless of age, to be transferred for certain offenses. For example, in West Virginia, any child who commits a violent criminal act must be prosecuted in adult criminal court.[250] In New York, any child with a specific prior record of offenses who commits a felony must be criminally prosecuted.[251] In Florida, any juvenile who commits auto theft or carjacking resulting in serious injury must be prosecuted in criminal court.[252] In addition, several States provide judicial discretion to waive any juvenile regardless of age to criminal court based on the specific offense.

According to NCSL, 16 States expanded their transfer provisions in 1995. Alaska, Arkansas, Delaware, Indiana, Louisiana, Minnesota, North Dakota, Oregon, Tennessee, Utah, and West Virginia added offenses for discretionary or mandatory juvenile prosecution in adult criminal court. Arkansas, Idaho, Iowa, Nevada, and Ohio enacted different types of once waived, always waived legislation.[253]

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243. TORBET ET AL., *supra* note 154, at 6.

244. GAO TRANSFER, *supra* note 223, at 13–14.

245. *Id.*

246. TORBET ET AL., *supra* note 154, at 8.

247. MODEL HANDGUN CODE, *supra* note 79, at 38.

248. *Prosecuting Juveniles as Adults*, N.Y. TIMES, May 20, 1996, at A14.

249. MODEL HANDGUN CODE, *supra* note 79, at 38–39.

250. *Id.*

251. NEAL MILLER, INSTITUTE FOR LAW AND JUSTICE, JUDICIAL WAIVER AND ITS ALTERNATIVES: STATE LEGISLATIVE SUMMARIES (DRAFT REPORT) 33 (Oct. 17, 1996) [hereinafter MILLER, SUMMARIES].

252. *Id.* at 10.

253. MILLER, JUDICIAL WAIVER, *supra* note 236, at 3, 13–14.

In addition, in 1995 many States established lower ages at which juveniles may be prosecuted in criminal court. For instance, Idaho passed legislation providing for waiver of juveniles under age 14 who commit certain felonies. Nevada lowered from 16 to 14 the age at which juveniles are subject to discretionary judicial waiver. West Virginia also lowered from 16 to 14 the age of discretionary transfer for certain juveniles charged with serious crimes. New Hampshire and Wisconsin lowered the maximum age of original juvenile court jurisdiction from 17 to 16.[254]

New York has enacted broad legislation providing for the transfer of juveniles to adult criminal court. In that State, juveniles may be prosecuted in adult criminal court at age 13 and older when charged with a violent felony. Juveniles with a specific prior record of offenses are prosecuted in adult criminal court at age 14 and older when charged with robbery, burglary, or assault and at any age when charged with a felony.[255] Moreover, in New York, all 16- and 17-year-olds are prosecuted in criminal court.[256] According to a *New York Times* editorial, Governor George Pataki wants to send all 16-year-olds currently in juvenile facilities to adult prisons, regardless of the offense.[257]

Florida has followed in this legislative trend. In that State, prosecutors may file charges directly in criminal court against any juvenile age 16 or older who commits a felony, any juvenile age 14 or older who commits a violent felony or burglary, and any juvenile who commits a homicide. In addition, juvenile court judges may waive to criminal court any juvenile age 14 or older based on certain findings.[258]

Offenders Judicially Waived to Criminal Court

Of the small fraction (less than 2 percent) of juvenile cases judicially waived to criminal court, drug offenders from 1988 to 1992 had the highest likelihood of waiver, according to a GAO study. The judicial waiver rate for drug offenders was 3.1 percent in 1992, down from 4.4 percent in 1991. Offenses against the person consistently ranked second, with a 1992 waiver rate of 2.4 percent. Offenses against property ranked third, with a 1992 rate of 1.3 percent, and offenses against public order had a rate of 0.8 percent.[259]

Moreover, nonviolent offenders comprised 66 percent—the clear majority—of all juveniles waived to adult criminal court in 1992, according to GAO's transfer study. Nonviolent offenders included property offenders, who constituted the largest proportion of all waived cases at 45 percent; drug offenders, who made up 12 percent of waived cases; and other offenders, at 9 percent. In contrast, 34 percent of cases waived were offenses against the person.[260]

According to OJJDP, another study reported that nonviolent offenders in 1993 continued to make up the majority of waived cases, representing 57 percent of all cases waived (38 percent of cases waived were property offenders, 10 percent were drug offenders, and 9 percent committed offenses against the public order). On the other hand, that study reported that offenses against the person rose to 42 percent of all waived cases.[261]

As mentioned, transfer legislation targets violent offenders as well as repeat offenders. These studies do not indicate, however, if any of the large numbers of nonviolent offenders waived to adult criminal court had a history of violent offending or were repeat nonviolent offenders.

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254. TORBET ET AL., *supra* note 154, at 6.

255. MILLER, SUMMARIES, *supra* note 251, at 33.

256. N.Y. FAM. CT. ACT § 301.2 (McKinney 1983 & Supp. 1996); N.Y. PENAL LAW § 30.00 (McKinney 1987); N.Y. CRIM. PROC. § 180.75 (McKinney 1993).

257. *Prosecuting Juveniles*, *supra* note 248.

258. MILLER, SUMMARIES, *supra* note 251, at 10.

259. GAO TRANSFER, *supra* note 223, at 11–12.

260. *Id.* at 11.

261. CAMPAIGN, *supra* note 221, at 5.

Impact of Waiver and Transfer

Juvenile waiver and transfer provisions have a tremendous impact on a young person's life. Prosecution in criminal court exposes juveniles to the same penalties as adults. They may face a life or death sentence, incarceration in State prison, and a permanent criminal record with attendant disabilities. Juveniles adjudicated in juvenile proceedings, on the other hand, generally must be released at age 21, receive rehabilitative treatment in a juvenile facility, and may be permitted to have their juvenile records expunged.[262]

Moreover, as mentioned previously, studies suggest that juveniles criminally prosecuted and incarcerated in an adult facility have the same or higher recidivism rates. Other studies have also found that youth incarcerated in adult institutions are five times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50 percent more likely to be attacked with a weapon than their counterparts in a juvenile facility.[263]

The NCJFCJ advocates caution in juvenile transfer. The council maintains that:

> Juvenile delinquency jurisdiction should be to age 18 in every State. In most cases, juvenile offenders can be effectively maintained in the juvenile justice system. In rare instances, the most violent offenders cannot be rehabilitated within the juvenile system and should be transferred for adult prosecution. However, the decision to transfer should only be made by the juvenile or family court judge.[264]

Sentencing Authority

Traditionally, the focus of the juvenile justice system has been on the rehabilitation of the juvenile. The juvenile court was seen as the common guardian of the youth who came before it, and the court was charged with ensuring that the child's best interests were considered when determining the proper disposition of a juvenile case. As a result, individuals adjudicated in the juvenile justice system were not subject to the same punitive standards and stringent sentences commonly imposed in adult criminal court. As violent juvenile crime and recidivism have increased, incapacitation in the interest of public safety and deterrence have become important system goals. State trends indicate that punishment and accountability have become equally important, if not primary, priorities in juvenile justice policy.[265]

A number of States have created "blended" sentencing structures for cases involving serious and repeat juvenile offenders as a mechanism for holding these youth accountable for their offenses, while retaining the court's ability to provide the most effective sanction option. According to its recent report on State responses to violent youth crime, NCJJ has defined these blended sentencing measures as "the imposition of juvenile and/or adult correctional sanctions to cases involving serious and violent juvenile offenders who have been adjudicated in juvenile court or convicted in criminal court."[266] In other words, this expanded sentencing authority may allow criminal and juvenile courts to impose either juvenile or adult sentences, or both, in cases involving juveniles.

One type of blended sentence allows juvenile courts to levy both juvenile and adult sanctions or dispositions simultaneously, while suspending the adult sanction. If the youth follows the conditions of the juvenile sentence and commits no further violation, the adult sentence is revoked. This type of sentencing authority has become popular in recent years, with Connecticut, Kentucky, and Minnesota among the States adopting this type of sentencing authority since 1994. In Minnesota, a system of intermediate sanctions was developed as a result of recommendations made by a State supreme court task force that facilitated major juvenile justice reform in 1994. Based on the newly created extended jurisdiction of juvenile prosecution (EJJP), juvenile court judges can impose both a juvenile dispositional order and an adult criminal sentence, with the latter stayed on the condition that the offender not violate the provisions of the juvenile

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262. TORBET ET AL., *supra* note 154, at 12.

263. CAMPAIGN, *supra* note 221, at 6.

264. *Id.* at 6–7.

265. MODEL HANDGUN CODE, *supra* note 79 (citing Brian R. Suffredini, *Note, Juvenile Gunslingers: A Place for Punitive Philosophy in Rehabilitative Juvenile Justice*, 35 B.C. L. REV. 885 (1994)).2

266. TORBET ET AL., *supra* note 154, at 18.

disposition order and not commit a new offense. Under EJJP, youth up to age 21 may be under continuing juvenile court jurisdiction. Sanctions for these youth are suited to meet individual needs, and if a participant violates the conditions of the stayed sentence or is alleged to have committed a new offense, the court may revoke the stay without notice and activate the adult sentence.[267]

Extensive juvenile justice revision in Connecticut (1995) and Kentucky (1996) mandates similar code provisions. As a result of these reform initiatives, the juvenile court may now impose both a juvenile and an adult sentence, with the latter being stayed on the condition that the youth neither violates the conditions of the juvenile sentence nor commits a new offense. If a violation occurs, the court may revoke the stay, revoke the probation, and direct that the juvenile be taken into immediate custody.[268]

In Texas, the juvenile court may impose a juvenile sanction that extends beyond the extended age of juvenile justice system jurisdiction (21), at which time transfer of the offender to an adult correctional facility is required. The terms of this statutory sentencing scheme mandate that a grand jury consider the original petition charging the youth and require a 12-person jury to determine guilt or innocence. Under this expanded sentencing authority, the juvenile court judge or jury is able to impose a sentence of up to 30 years, depending on the seriousness of the crime. After sentencing, the juvenile is held in a secure Texas Youth Commission facility until he reaches the age of majority, at which time, as a result of new legislation enacted in 1995, the youth may be required to complete the full term of the sentence. This broad jurisdiction of the juvenile court was augmented further by the 1995 legislation, which added several offenses for which a juvenile may receive a determinate, fixed term of up to 40 years.[269]

Other types of sentencing initiatives allow the adult criminal court to levy a wide array of dispositions—including juvenile sanctions—on youth offenders who are transferred to its jurisdiction. According to IIJ research, adult court judges in 12 States have this authority for some offenders, usually those who have committed less violent crimes.[270] In Florida, where the provisions for transferring a youth to adult criminal court were made easier in 1994, the legislature also gave the criminal court broader discretion in its sentencing authority by allowing it to levy both juvenile and adult dispositions on the youth appearing before it. Now, the criminal court judge is presented a report by the Department of Corrections and the Department of Juvenile Justice on the sentencing options for the offender within both systems. This, coupled with statutorily defined factors, guides the judge's determination of whether to impose juvenile or adult sanctions on the offender.[271]

The State of Missouri in 1995 created a sentencing system much like the reform initiatives in Connecticut and Kentucky, under which the adult criminal court may levy both a juvenile and an adult sentence, as opposed to this authority being vested in the juvenile court. The new law allows juveniles ages 12 to 17 to be transferred to adult criminal court for various felony offenses or if the youth is found to be a habitual offender. The criminal court judge may impose simultaneously a juvenile and criminal sentence, with the latter being stayed on the condition that the youth successfully completes the term of the juvenile disposition.[272]

Another common way the adult criminal court can levy juvenile sanctions is through the creation of youthful offender programs. These systems, otherwise known as "intermediate" or "third systems," provide a mechanism that allows States to impose strict, adult sanctions on juveniles or young adults convicted of violent crimes, while maintaining a rehabilitative focus. Since the State of Colorado enacted the first program of this type in 1993, at least 11 other States have followed suit.[273] Participation in youthful offender-type programs is an option for offenders deemed by a judge to deserve one last

267. MINN. STAT. § 260.125 (Supp. 1995).

268. CONN. GEN. STAT. § 46b–120 (Supp. 1996), KY. REV. STAT. ANN. § 38–1663 (Michie Supp. 1996).

269. TORBET ET AL., *supra* note 154, at 21.

270. MILLER, JUDICIAL WAIVER, *supra* note 236, at 6.

271. TORBET ET AL., *supra* note 154, at 22.

272. *Id.* at 8.

273. MILLER, JUDICIAL WAIVER, *supra* note 236, at 4.

chance before being sent to an adult facility. Youthful offenders are able to reach these intermediate systems, typically components of adult corrections departments, when an adult criminal court judge suspends a regular adult criminal sanction for a juvenile waived to criminal court or when a young adult convicted of a crime is believed to be particularly amenable to rehabilitation.

A premise of many youthful offender programs is that effective sanctions for more violent juveniles are those that emphasize a wide range of services with focused, individual attention on the participants, principles that are included in the Colorado Youthful Offender System (YOS). YOS is designed to challenge patterns of thinking and behavior that result in criminality and acts of violence, including gang-initiated criminal behavior. The YOS focus emphasizes treatment, discipline, and a successful transition back into society with a low staff-to-offender ratio.

The Colorado YOS has four distinct phases. The first, an intake, diagnostic, and orientation program, is an attempt to change the anti-authority attitudes common in most YOS youth. Phase II begins the period of institutional confinement, with requirements that consist of a range of "core programs, supplementary activities, and educational and prevocational programs."[274] The time an offender spends in phase I depends on the length of the YOS sentence. During phase III, which occurs during the last 3 months of the period of institutional confinement, the Colorado Department of Corrections is authorized to transfer the youthful offender to any residential program serving youth. Finally, phase IV is a period of aftercare and community supervision in which the offender, under intensive monitoring, is reintegrated into society.[275]

Under the Colorado YOS, criminal court judges impose a regular adult sentence on the youth, but suspend it if the youth successfully completes the YOS sentence. Typically, juveniles and young adults are sentenced to 2 to 6 years in the YOS, with a community placement and aftercare provision for the last 6 to 12 months of the sentence. Youth may have their adult sentences revoked after successful completion of the YOS program, providing they do not commit new crimes and follow the regulations of the YOS program.[276]

Effectiveness of Expanded Sentencing Authority

Different perspectives can he heard regarding the efficacy of these types of sentencing dispositions. For example, in an analysis of judicial waiver and its alternatives, the IL.J has studied the issue of blended sentences and expanded sentencing authority and postulates that this augmented jurisdiction could facilitate a more efficient administration of justice:

> The sometimes contradictory commands of the waiver laws' punishment objectives and the concern for individualized treatment embodied in the amelioration laws can result in opposing decisions being made in the two courts. Justice system inefficiency and ineffectiveness can result, for example, where the juvenile court waives a juvenile to the criminal court and then the case is remanded back to the juvenile court. A similar contradiction arises where the juvenile court determines that a juvenile cannot be treated and waives the youth to the criminal court where the juvenile is sentenced to a youth offender treatment program. One solution is to authorize a single court to determine whether punishment or treatment is preferable in the instant case. This is done by transferring sentencing authority from the opposing juvenile or criminal court to the court with jurisdiction over the juvenile defendant's case.[277]

However, research recently completed by NCJJ indicates that blended sentencing initiatives may cause more confusion than good. "Blended sentencing creates confusing options for all system actors, including offenders, judges, prosecutors, and

274. COLO. REV. STAT. ANN. § 16–11–311 (Supp. 1996).

275. *Id.*

276. *Juvenile Crime*, *supra* note 127, at 18.

277. MILLER, JUDICIAL WAIVER, *supra* note 236, at 5.

corrections administrators. Contact with juvenile and criminal justice personnel across the country revealed that confusion exists about these statutes and the rules and regulations governing them, especially with respect to the juvenile's status during case processing and subsequent placement. This has repercussions on the definition of a juvenile with regard to compliance with the Juvenile Justice and Delinquency Prevention Act mandates."[278]

Another consideration for policymakers contemplating these sentencing alternatives relates to the constitutional rights of juveniles. More States are expanding the mechanisms by which juveniles are ultimately disposed—either by the juvenile or adult criminal court—to adult sanctions and sentences. Alleged juvenile offenders who are prosecuted in the adult criminal justice system, subject to adult sanctions, or serving time in adult facilities must be afforded the same substantive and procedural rights as alleged and convicted criminal offenders. A related issue for States is determining the availability of resources through which States can provide for jury trials, bail, and other criminal justice system rights for juveniles subject to blended sentencing or incarceration in adult correctional facilities.

278. TORBET ET AL., *supra* note 154, at 18.

Chapter III
Selected Case Studies of Juvenile Reform Initiatives

Although some States have been enacting a series of single legislative measures aimed at juvenile justice, many others have embraced the idea of comprehensive juvenile code revision. Since 1994, several States have enacted laws that make broad changes to the types of treatment options and sanctions available for juveniles, the jurisdiction and sentencing authority of the juvenile and adult courts as they relate to juvenile cases, and the accessibility of information on juvenile offenders.

Each State that undertakes juvenile justice reform must be responsive to the unique political, social, and fiscal conditions that make up its environment. In this chapter, case studies from four States that are at various stages of implementing juvenile justice reform initiatives—Colorado, Connecticut, Ohio, and Oregon—will describe the strategy employed by each State in implementing its reform initiative.

The four States were chosen for several reasons. First, they represent different regions of the country and have distinct demographic makeups. Also, each reform initiative differs in its focus and stage of implementation: Colorado's is the newest reform initiative, enacted in 1996, while Connecticut and Oregon are grappling with implementation issues for initiatives passed in their legislatures in 1995. Meanwhile, Ohio's juvenile justice reform measure is well into statewide implementation following its enactment in 1993.

The case studies will explore what the context or climate was that encouraged policymakers to initiate changes in the juvenile justice system and whether these contextual factors were single events or the products of multiple influences. The proponents and opponents of change to the administration of juvenile justice will be identified, and the role that their support or opposition played in the evolution of the reform package as it moved through the legislative process will be discussed. Further, each case will not only identify and summarize the various programmatic elements and legal changes of the reform, but will go beyond that to identify obstacles that may hamper the implementation of the reform initiative and highlight those factors that facilitate support for changes in the administration of juvenile justice. Finally, each case study will report on the current status and prognosis for each subject State's reform initiative.

Colorado: Review of Children's Code Brings Significant Change for Juvenile Justice Administration

Introduction

The passage of House Bill 96–1005 in the 1996 legislative session completed a 3-year assessment of juvenile justice administration in the State of Colorado. Beginning with a special legislative session called by Governor Roy Romer in 1993 to address the increasing number of youth in need of services from the human services and judicial systems in the State, Colorado has undertaken a comprehensive review of State juvenile services.

Through the work of the Interim Committee on Youth Violence, the Task Force on the Recodification of the Children's Code, and the Legislative Oversight Committee (LOC), several initiatives were introduced in the 1996 legislative session that proposed significant changes to the administration of child welfare and juvenile justice policies in the State. The legislative process brought many changes and amendments to the proposals and resulted in a system that seeks to balance youth accountability for delinquent and violent behavior with the best and

most appropriate services to help youth become contributing members of society.

Although it is too early to assess the long-range impact of the measure, officials expect that a full implementation of the law will result from their 3-year commitment to finding "what works" and soliciting the views of hundreds of Coloradans concerned with the administration of juvenile justice in their State.

Impetus for Reform: A Summer of Violence

The juvenile justice reform effort in Colorado was prompted by what the local press termed a "summer of violence" in the State in 1993. In the span of only a few months, a series of random violent acts seriously injured or killed several people in the Denver metropolitan area. The media recounted incidents in which a 10-month-old child was wounded by a stray bullet while visiting the Denver Zoo and a young boy was hit in the arm by a random gunshot while playing on his aunt's porch. In another incident, a young man was murdered and his wife abducted and assaulted as they were en route to their neighborhood grocery store.[279]

The availability of firearms to youth in the community in large part accounted for the increased violence. According to an article that appeared that summer in the *Denver Post*, "[Local] authorities agree that the prevalence of weapons among youths is at an all-time high. In the first five days of a high-intensity gang sweep, Denver officers confiscated 69 guns, mostly from teenagers."[280]

The rash of violence caused significant concern among the public and among State and local officials, who noted the shocking nature of the randomness and unpredictability of the violence in the area. Denver District Attorney Bill Ritter noted that "the violence we are seeing has, to some extent, a random nature. And while it has a gang dynamic, we have innocent people who are not gang involved who are being injured and killed...and that is something new."[281] The Governor expressed the same concern with random and impersonal violence, which is especially frightening to citizens. The drive-by shooting, and the irrationality of such an act, indicated to the Governor "an abandoning of our moral code."[282]

In response, Romer called a special legislative session in September 1993. A result of the 10-day session was the creation of an Interim Committee on Youth Violence that studied juvenile justice activity in the State and concluded that the children's code was in need of revision.[283] The committee determined that, although the laws governing children and families had been reviewed and partially recodified in 1988, the changes made in that year were not comprehensive. It noted that the number of children in need of support services overwhelmed the human service and judicial systems. The committee found that there was an imbalance between treatment and aftercare for children receiving services, which were fragmented and duplicative in some cases. Further, little substantive information was available on the effectiveness of the services and interventions provided to youth and their families. State leaders also realized the importance of the community's role in providing services to youth and the necessity of interagency communication in providing appropriate sanctions and services to children.[284]

This conclusion, coupled with the work and recommendations of the Interim Committee, led to the 1994 introduction and enactment of S. 94–21, Concerning a Task Force Study for the Recodification of the Colorado Children's Code.

Task Force for the Recodification of the Children's Code

The primary charge of the task force was to determine whether the Colorado Children's Code needed to be

279. Steve Lipsher, *Denver's Summer of Violence: Irrational Shooting Sparks Fear in Areas Previously Untouched*, DENVER POST (Aug. 8, 1993).

280. *Id.*

281. *Id.*

282. *Id.*

283. TASK FORCE FOR THE RECODIFICATION OF THE COLORADO CHILDREN'S CODE, S. 94–21 (COLO. 1994) (on file with author) [hereinafter RECODIFICATION].

284. *Id.*, LEGISLATIVE OVERSIGHT COMMITTEE, LEGISLATIVE OVERSIGHT COMMITTEE FOR THE RECODIFICATION OF THE COLORADO CHILDREN'S CODE, p. v. (n.d.).

rewritten entirely or only modified in places. The statutorily defined duties of the task force were as follows:

- To evaluate the overall effectiveness of the Colorado Children's Code, identify areas in need of revision, and provide guidance and make recommendations to the Legislative Oversight Committee in its development of a legislative proposal for the recodification of the children's code.
- To communicate with and obtain input from groups throughout the State affected by the recodification of the code.
- To create subcommittees as necessary to include individuals not serving on the task force in order to aid in the completion of the task force study and the development of a legislative proposal.[285]

For the next 12 months, beginning in the fall of 1994 and extending through the entire 1995 legislative session, a diverse task force was assembled. It was composed of representatives from State and local agencies, family court judges, probation officers, attorneys, representatives from nonprofit agencies charged with the treatment of families and children, and a family that would experience the impact of changes in children and family law in the State.

To facilitate the task force objectives, subcommittees were formed in eight topic areas that included juvenile justice; child protection; relinquishment of parental rights and adoption, paternity, and child support; development of a single uniform assessment instrument; family-focused legal and administrative procedures; performance-based standards for service providers; homeless youth; and parental rights and responsibilities.[286] Members of the task force solicited 120 additional Coloradans to participate on these subcommittees. Subcommittees met frequently and reported monthly to the subcommittee chair, who was a task force member, on their progress and recommendations.

According to the task force's final report submitted to the LOC in September 1995, the chairman of the task force noted in his opening comments that:

> [T]he Colorado Children's Code contained a basic structure, focus, and legislative process that needed only clarification and some modification rather than an entirely new code ... and that most of the changes made by the special session in 1994 related to delinquency addressed the needs of public safety. There were, however, a number of recommendations made to allow the system to be more responsive to the principles of responsibility. This meant that public safety is suggested as needing a higher priority with consequences for criminal behavior being imposed more rapidly and more meaningfully.[287]

The Juvenile Justice Subcommittee Findings and Recommendations

The juvenile justice subcommittee began its work by articulating the goal of creating "an effective juvenile justice system that addresses the needs of children and their families and preserves the safety of the community, and under which early intervention and prevention services are available." The salient policy issues it identified for discussion were public safety and accountability for behavior; out-of-home placement of delinquent youth; the relationship between the juvenile justice and education systems; juvenile social and delinquency history and records; juvenile parole, detention, and diversion; fragmentation of services across the State; the statutory creation of the Division of Youth Services within the Department of Human Services; the role of juvenile courts; the needs of special offenders; and direct file and other transfer provisions.[288] Further, the subcommittee wanted to create a system that coordinated assessment procedures and youth services into a system whose base was at the community level and to suggest feasible revisions that would result in more expeditious processing of juvenile caseloads.[289]

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285. *Id.* at v, vi.

286. RECODIFICATION, *supra* note 283.

287. TASK FORCE FOR THE RECODIFICATION OF THE CHILDREN'S CODE: FINAL REPORT (Sept. 1995) [hereinafter FINAL REPORT].

288. RECODIFICATION, *supra* note 283.

289. RECODIFICATION TASK FORCE, SUMMARY OF RECOMMENDATIONS FOR JUVENILE JUSTICE REVISIONS (on file with author) (n.d.) [hereinafter SUMMARY OF RECOMMENDATIONS].

In its work, the panel also battled with the perception that government was intervening in the lives of families and children inappropriately and circumventing a parent's right to raise his or her child. The chairman of the juvenile justice subcommittee, who also served as the director of the Department of Human Services, was particularly responsive to many of these issues, according to the task force's final report. "[The director] consistently looked for ways to reduce government interference while maintaining the department's ability to properly respond to the needs of children and families when appropriate."[290]

Through the work of the juvenile justice subcommittee, the task force presented nearly 20 juvenile code recommendations to the LOC. The recommendations included establishing a cabinet-level position for youth crime prevention; augmenting the role of the municipal courts in processing juvenile cases; setting aside funds to supplement community corrections allocations; and changing procedures regarding the transfer of information about delinquent youth between the juvenile justice and education systems, while getting tough on parents of truant children.[291]

The majority of the subcommittee recommendations, however, related to a juvenile offender's entry into the juvenile justice system and subsequent adjudication. Presentencing assessment and sentencing options also were addressed. The provisions of these four primary categories include:

- **Arrest and Entry.** The task force proposed that a juvenile could be interrogated without a parent if both the youth and parent agreed. It also suggested the creation of a Juvenile Assessment and Intake Program (JAIP) in each judicial district. The JAIP would be required to use a uniform assessment tool to gauge the needs of the offender and the risks the juvenile poses to the public. Finally, a common juvenile justice information system was proposed.

- **Adjudication.** The task force sought to make more specific the acceptable timeframes for case processing, reflecting the importance of providing an immediate sanction for youth misbehavior. It also sought to change the way the State transferred juveniles into criminal court by expanding direct filing authority to 12- and 13-year-olds charged with a class 1 or 2 felony. As a result of that change, the body proposed to eliminate a prosecutor's ability to file a motion to have a case transferred to district court. The task force suggested expanding the definition of aggravated juvenile offender to those youth charged with sexual assault on a child.

- **Presentencing.** These task force recommendations focused on presentencing assessment procedures. The recommendations called for incorporating specific areas of assessment into the statute and combining the probation; social services; and Department of Human Services, Office of Youth Services' evaluations into one interdisciplinary evaluation. Finally, the task force recommended that interagency community review teams be developed to screen and recommend placements in levels beyond normal probation supervision, a concept already in place in many Colorado jurisdictions.

- **Sentencing.** The task force sought to clarify and make more consistent the criteria by which juveniles are sanctioned in Colorado. It recommended that the minimum juvenile sentence be based on offense type and proposed expanding placement options for juveniles adjudicated delinquent. It advocated for an increased role for parents in delinquency proceedings and proposed removing the cap on parental responsibility for restitution payments. Further, the task force proposed to allow juvenile court judges to use indeterminate sentencing procedures and retain authority to reduce the sentence in certain cases. Community review teams would play a role in sentencing as well, by reviewing enhanced and community placement sentencing options. The teams also would be responsible for parole plan review and approval under the recommendations. Parole terms would have a mandatory minimum of 1 year.[292]

290. FINAL REPORT, *supra* note 287.

291. ACTION TAKEN BY THE LEGISLATIVE OVERSIGHT COMMITTEE ON THE FINAL REPORT ON THE TASK FORCE FOR THE RECODIFICATION OF THE CHILDREN'S CODE 5–7 (n.d.) [hereinafter ACTION].

292. SUMMARY OF RECOMMENDATIONS, *supra* note 289, at 1–5.

The task force combined the juvenile justice subcommittee recommendations with the recommendations of the other seven subcommittees and submitted its final recommendations to the LOC for review.

Legislative Oversight Committee Action

The LOC reviewed the task force's recommendations for incorporation into a legislative proposal to be introduced before the General Assembly in the 1996 session. The LOC was composed of three representatives and three senators concerned with issues facing children and families: Representative Jeanne Adkins, chairman; Representative Russell George; Representative Jeannie Reeser; Senator Sally Hopper, vice chairman; Senator Gloria Tanner; and Senator Dottie Wham.

The LOC reviewed and debated the task force's recommendations and adopted many of the task force's provisions, including proposals to statutorily create the Department of Youth Services; establish the JAIP risk assessment program and instrument; make juvenile records more accessible; create a juvenile justice information system; lift the cap on parental liability for juvenile restitution payments; and enact measures to ensure consistent sanctioning through indeterminate sentencing and mandatory parole. The LOC amended and adopted several other provisions, including:

- Requiring municipal court judges to sentence juveniles to appropriate community programs when they are available and appropriate. The task force had suggested encouraging the judges to use community-based alternatives.
- Allowing for placement of juveniles into the Regimented Juvenile Training Program (boot camp), in combination with another secure placement. The task force suggested that the court should not combine boot camp placement with any other sanction involving secure confinement.
- Expanding direct filing authority via transfers for juveniles ages 12 to 14 for class 1 and 2 felonies and repealing the transfer provisions for all other cases. The task force recommended repealing the transfer statute entirely and augmenting direct file provisions for 12- and 13-year-olds charged with class 1 and 2 felonies.[293]

Although the LOC accepted many of the core ideas set forth by the task force, it also rejected several key components of the task force's findings. For example, it rejected the idea of setting aside a portion of State appropriations to judicial districts to be combined with community funds for community corrections programs for nonfelony offenders. LOC members were concerned that this plan would result in a first-come, first-served delivery of services. They questioned the availability of services under this plan if a juvenile entered the system after the State and community-raised funds were expended. Further, the LOC was concerned this would result in localized services and circumvent the goal of reducing fragmented service delivery across the State. In rejecting this portion of the proposal, the LOC also rejected the community review team concept.[294]

The LOC also rejected several initiatives related to parental responsibility for truant behavior. The committee members agreed that parents should be somewhat accountable for truant children but noted that often parents did not have control over their children. They also were not in favor of keeping unruly children in class and, as a result, voted to repeal the compulsory school attendance law. According to the LOC report, the committee "agreed that students who do not want to attend school will not attend school," and that some committee members "questioned the State law, which requires the attendance of disruptive students who don't want to be in school . . . [thus] rendering schools as houses of detention."[295]

Finally, the LOC did not support the recommendation to create a cabinet-level position for prevention purposes. It voted instead to establish a function in

293. ACTION, *supra* note 291, at 35–43.

294. *Id.* at 35.

295. *Id.* at 37.

the State auditor's office that would coordinate and evaluate prevention and intervention strategies and programs in the State and identify duplicative efforts.

Elements of Reform

H.R. 96–1005, as introduced before the 1996 General Assembly, reflected the conclusions of the LOC. During the 1996 legislative session, however, a series of hearings and testimony exposed some dissent from the plan put forth by the LOC. Myriad views were heard and represented as the bill moved through the legislative process. For example, some groups, including State prosecutors, believed the LOC proposal had deviated significantly from the task force's findings. Still other groups were concerned about any expansion of the role of the State in making decisions about sanctioning and services for children and its impact on the privacy right in child rearing.[296]

As the bill moved through the legislature, however, it became clear to all interested parties that the children's code needed significant revision. Because this bill would have an impact on the children's code in its totality, interested parties believed this was an opportunity for broad change in the administration of child welfare programs. A collective mindset was created from two somewhat opposing camps: those who supported the reforms and valued increased accountability in the juvenile justice system and those who perceived the discussion of children's code reform as an opportunity to contribute more broadly to the climate of change. This environment lent itself to compromise and collaboration as the four primary pieces of legislation representing the work of the task force—recodification of juvenile code definitions, juvenile justice reform, child welfare amendments, and information management for multiagency access to information on youth—moved through the legislature.[297]

Although the reform initiative, as enacted, differed significantly from the original task force recommendations, many of the core ideas and concepts were in place in the final bill. For example, the legislature, through its action, created a measure that prioritized increased accountability and a swift sanction against juvenile delinquency and youth misbehavior. It retained the provisions for transferring juveniles to criminal court to allow them to be held accountable for violent behavior. The law also clarified the roles and expectations of various State and local officials who come into contact with these youth as they are processed through the juvenile justice system.

House Bill 96–1005. The juvenile justice reform initiative resulting from Colorado's 3-year study of the delivery of services to youth in the State made several significant changes to the manner in which juvenile justice is administered. The continued attempt to balance both a youth's accountability and his or her rehabilitation and treatment is evident in the legislative declaration of the State's juvenile justice system reform:

> The General Assembly hereby finds that the intent of this article is to protect and improve the public safety by creating a system of juvenile justice that will appropriately sanction juveniles who violate the law. The General Assembly further finds that, while holding paramount the public safety, the juvenile justice system shall take into consideration the best interests of the juvenile in providing appropriate treatment to reduce the rate of recidivism in the juvenile justice system and to assist the juvenile in becoming a productive member of society.[298]

In addition, the law required a 1-year mandatory parole period, removed the cap on restitution for parents of delinquent youth, and provided increased agency access to youth records—provisions that were included in both the task force and LOC recommendations.[299]

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296. Telephone Interview with Pat Cervera, Juvenile Justice Specialist, and Joe Thome, Program Administrator, Office of Juvenile Justice, Colorado Department of Public Safety, Division of Criminal Justice (Jan. 6, 1997) [hereinafter Cervera and Thome Interview].

297. *Id.* According to officials, all the bills but the child welfare initiative passed. It is expected to be reintroduced in the 1997 legislative session.

298. COLO. REV. STAT. § 19–2–102 (1996).

299. STATE OF COLO. OFFICES OF LEGISLATIVE LEGAL SERVICES AND LEGISLATIVE COUNCIL, JUVENILE JUSTICE HB 96–1005 (Mar. 1996).

The enacted measure slightly amended most of the LOC recommendations set forth in H.R. 96–1005. The enacted provisions include:

- Facilitating speedy case processing through expanded deadlines and provisions for the court to grant continuances for good cause.
- Creating a new Division of Youth Corrections in the Department of Human Services.
- Providing for juvenile intake teams to assess the needs of alleged youth offenders as they enter the system, replacing the JAIP proposal. The law eliminated the proposed required assessment tool, allowing local authorities to adopt assessment instruments appropriate to local needs.
- Redefining "aggravated juvenile offenders" to include juveniles ages 10 to 12 charged with a crime of violence. This class of young offenders had the right to a six-person jury trial.
- Clarifying and changing LOC recommendations for sentencing youth to boot camp programs.
- Requiring parental involvement in juvenile proceedings and hearings before the juvenile court, with exceptions for good cause.
- Adding crimes for which a district attorney may elect to file adult criminal charges and allowing for transfer to criminal court of juveniles ages 12 and 13 charged with class 1 or 2 felonies, rather than juveniles ages 12 to 14 as proposed by the LOC.[300]

Implementation and Outlook

Because many of the provisions of H.R. 96–1005 were not effective until January 1, 1997, it is still too early to tell what issues, if any, will help or hinder implementation of the juvenile justice reform effort. The parties involved in this effort took steps to increase support and buy-in for juvenile justice reform in hopes of facilitating full implementation of the measure. For example, the Colorado State Advisory Group advocated for the task force to be composed of members who represented different perspectives and priorities for juvenile justice reform. Having diverse representation forced those individuals with opposing views and interests to listen to the opinions of others and allowed a mechanism for all voices to be heard and represented. According to State officials, this broad inclusion and availability "at the table" helped facilitate support for the bill.[301]

Further, the involvement of more than 100 additional Coloradans participating on the subcommittees was significant in ensuring that all interests were represented. Subcommittee selections were made with attention to geographic, racial, and gender diversity, and a person's group identification — social worker, government attorney, therapist, parent, or father's rights. This avoided overrepresentation of a particular group on a subcommittee.[302]

Although the sensational media accounts in 1993 likely inspired juvenile justice reform by enhancing the public's perception and concern about the problem of juvenile crime, the media presentation of the proposed changes to the juvenile justice code in 1996 were much more substantive and informative. One observer noted the absence of sensational headlines in the local papers and the inclusion of more substantive information in articles about the policy changes being debated before the legislature. For example, at one point early in the debate on juvenile justice reform, a provision was introduced to drop the age of direct file to 10 for some offenses. The media stories discussed the advantages and disadvantages of making a change of that type in the law.[303]

With significant statewide support for the legislation, it is expected that the effort will be sustainable. State officials already have anticipated some changes in current infrastructure to accommodate the changes made by the law. For example, the mandatory 1-year parole provision has led policymakers to appropriate additional funds to help judges and court personnel prepare for more juvenile parole cases. An additional allocation was made to the judicial department

300. Colorado Department of Human Services & Division of Youth Corrections, Summary of House Bill 96–1005, The Colorado Juvenile Justice System.

301. Cervera and Thome Interview, *supra* note 296.

302. Recodification, *supra* note 283.

303. Cervera and Thome Interview, *supra* note 296.

to help the courts hire administrative staff or part-time magistrates.[304]

Only time will tell if the initiatives set forth by the legislature will achieve the goals of holding juveniles accountable for their behavior, reducing recidivism, and helping delinquents become contributing members of society. Supporters anticipate that the modifications to the juvenile justice system and the other changes to the children's code will enable the State to have a positive impact on the lives of all its youth.

Connecticut: Balancing Service and Public Safety Objectives in Juvenile Justice System Reform

Introduction

With the enactment in June 1995 of Public Act (P.A.) 95–225,[305] An Act Concerning Juvenile Justice, Connecticut set out to reform its juvenile justice system. The principal thrust of the State's reform initiative was to make major corrections in a system that was viewed as both too lenient with serious and violent juvenile offenders who posed public safety risks and unresponsive to the treatment needs of juvenile offenders.

The centerpiece of Connecticut's reform initiative was a set of provisions that would require the transfer of 14- and 15-year-olds who commit serious felonies to adult court, permit access to confidential juvenile records, transfer prosecutorial jurisdiction for juvenile crime from the State's judicial branch to the Division of Criminal Justice, and expand services for and supervision of juvenile offenders.[306]

P.A. 95–225 also called for the development of a plan to bring about an across-the-board reorganization of the State's juvenile justice system. The act charged a task force composed of executive, judicial, and legislative branch officials with developing the plan for consideration by the Governor and the State legislature.

By fall 1996, the State had completed its reorganization plan and moved forward to implement various features of its reform initiative. Earlier that year, however, the reorganization effort had suffered a setback when, despite overwhelming support for the initiative, the State legislature did not pass enabling legislation needed to support implementation of two key components of the plan: the transfer of juveniles awaiting trial as adults to the Department of Corrections and expedited renovation and construction of juvenile facilities.[307]

Enabling legislation was to be reintroduced in January 1997. Officials closely involved with the reform initiative are optimistic that the needed legislation will be enacted and that the goals of P.A. 95–225 will be achieved.

Impetus for Reform

Connecticut's reform of its juvenile justice system evolved in many ways from major reforms accomplished in the State's adult system beginning in the early 1990's.[308] By 1994, the State had delivered on its promise that adults convicted of violent offenses would serve longer terms. The State had acted to ensure that adults convicted of violent offenses would serve the sentences that they received, and it had built the new prisons needed to hold them.

However, by the mid-1990's, it was clear to the public and its elected and appointed officials that during the period of improving the adult system the juvenile justice system had been largely neglected. "When the improvements in the adult system were complete, all of a sudden all of the problems in the juvenile justice system were glaringly obvious," according to one State executive branch official.[309]

A principal catalyst for the public's focus on the juvenile justice system in the State was an evolving

304. *Id.*

305. 1995 Conn. Acts 225 (Reg. Sess.). This act was signed into law by Connecticut Gov. John Rowland on June 28, 1995.

306. *Id.*

307. Telephone Interview with Thomas A. Siconolfi, Director, Policy Development and Planning Division, Connecticut Office of Policy and Management (Oct. 30, 1996) [hereinafter Siconolfi Interview].

308. *Id.*

309. *Id.*

gang problem that encompassed not only Connecticut's urban centers but some of its more suburban communities.[310] Law enforcement officials were finding large numbers of juveniles in broad sweeps of gangs. These juveniles, though young in age, were often experienced gang members who were committing serious and violent crimes and receiving minimal sanctions for their activities. Their youth was being exploited by older gang leaders who knew that these young gang members would receive lesser penalties for their actions in the juvenile justice system than their older, adult counterparts would in the criminal justice system. Moreover, there was only a slim chance that a juvenile gang member adjudicated for a serious or violent crime would serve any significant time in a correctional facility. The Long Lane School, the most secure and prisonlike facility for juveniles in the State, was seriously overcrowded, and it was widely known that stays at the school were limited to only a few months.[311]

The contrast in the justice system's treatment of adult and juvenile offenders who committed similar crimes was obvious to all observers. To one State official, it seemed as if the State was hammering the adult members of the gang and being manipulated with respect to the juvenile members of the gang.[312] The public wondered why 16- and 17-year-olds (adults under Connecticut law) who committed serious crimes had to serve serious time in prison, but 15-year-olds who committed similar crimes did not.

Elements of Reform

P.A. 95–225 is an expansive law that establishes the framework, and sometimes prescribes the specifics, for dramatic change in the operations of the State of Connecticut's juvenile justice system. The law sets out numerous organizational and operational changes in agencies of the juvenile justice and related systems, including the courts, probation, children and family services, and corrections.[313] It calls for the development of risk assessment, case classification, and purchase-of-services systems; enumerates and describes programs to be included in an expanded network of services for juvenile offenders; and makes changes in judicial proceedings concerning both delinquent children and juveniles accused of serious crimes.

The three principal goals of P.A. 95–225 are to ensure that:

- Juveniles are held accountable for their unlawful behavior.
- Programs and services are designed to meet the needs of juveniles.
- Communities are adequately protected.[314]

The statute states:

> It is the intent of the general assembly that the juvenile justice system provide individualized supervision, care, accountability and treatment in a manner consistent with public safety to those juveniles who violate the law . . . . The juvenile justice system shall also promote prevention efforts through the support of programs and services designed to meet the needs of juveniles charged with the commission of a delinquent act.[315]

At the heart of P.A. 95–225 are provisions that reflect the divergent viewpoints of the two principal constituencies that helped to shape the reform initiative: policymakers who favored concentrating system improvements on the serious and violent juvenile offender and those who focused their efforts on making substantial investments in expanding and improving services for all juvenile offenders. The following four key elements of the statute further reflect these two constituent interests:

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310. *Id.*

311. *Id.*

312. *Id.*

313. 1995 Conn. Acts 225, §1 (Reg. Sess.).

314. JUVENILE JUSTICE POLICY GROUP, CONNECTICUT OFFICE OF POLICY AND MANAGEMENT, JUVENILE JUSTICE REORGANIZATION PLAN 2 (1996) [hereinafter POLICY GROUP].

315. 1995 Conn. Acts 225, § 1 (Reg. Sess.).

- Providing access to previously confidential juvenile records.
- Developing a workable mechanism to transfer 14- and 15-year-old juveniles who commit serious felony crimes to criminal court.
- Transferring prosecutorial jurisdiction for juvenile crime from the State's judicial branch to the Division of Criminal Justice of the Office of the Chief State's Attorney.
- Providing appropriate supervision, programming, and services for all levels of juvenile offenders.[316]

The Reform Strategy

The new law envisioned sweeping changes in the State's traditional approach to managing juvenile offenders. Accordingly, implementation of the new law would require a massive reshuffling of the juvenile justice system and additional laws and resources to support the mandated changes. The State legislature called for the development of a juvenile justice reorganization plan to be submitted to the Governor and the State legislature by February 1, 1996.[317] To develop that plan, the legislature created a task force composed of the chief court administrator, the commissioner of children and families, and the under secretary of the Planning Division of the Office of Policy and Management.[318]

The legislature charged the task force, known as the Policy Group, with producing recommendations in 16 areas that ranged from studying the feasibility of transferring the State's juvenile detention centers from the judicial branch to the Department of Children and Families, to entering into contracts with service providers, to producing a comprehensive plan for juveniles who are substance abusers.[319] The legislature instructed the Policy Group to consult with the attorney general, the State treasurer, the chief State's attorney, the Division of Public Defender Services, and the cochairs and ranking members of the State legislature's judiciary and appropriations committees in formulating the reorganization plan. Overall, the reorganization plan would address the allocation of staff and responsibilities between the Department of Children and Families and the judicial branch and would "include recommendations for revisions and reallocations in the . . . [state] budget to implement . . . [the] reorganization plan."[320]

Three principles guided the work of the Policy Group:

- A range of structured alternatives for juveniles should be created that would be available to judges handling juvenile matters.
- A balance should be achieved between institutional and community-based services to ensure that the full range of needs of delinquent juveniles is met.
- A flexible, multiyear approach should be pursued in implementing the reorganization plan.[321]

To ensure that its mandate was met fully, the Policy Group developed a planning process under which five committees—State facilities, community-based programs and services, mental health services, substance abuse services, and State-operated services—were convened and the 16 legislative requirements divided among the committees. The Policy Group and its committees were aided in their work by a planning and management group, which provided assistance in project management, and by designated committee facilitators, who provided assistance in meeting timetables and in preparing the final report.[322] The State's gubernatorially appointed juvenile justice advisory committee, created to oversee administration of the State's participation in the Federal Juvenile Justice Formula Grants Program, also provided advice and support for the reorganization effort.

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316. POLICY GROUP, *supra* note 314, at 15.

317. 1995 Conn. Acts 225, § 8 (Reg. Sess.).

318. POLICY GROUP, *supra* note 314, at 17.

319. 1995 Conn. Acts 225, § 8 (Reg. Sess.).

320. *Id.*

321. POLICY GROUP, *supra* note 314, at 20.

322. *Id.* at 17.

On February 1, the Policy Group formally transmitted its reorganization plan to Governor John Rowland and the Connecticut General Assembly. On February 7, the Governor forwarded his budgetary and legislative proposals to implement the reorganization plan to the General Assembly.

The reorganization plan presented some two dozen detailed recommendations for achieving the legislative goals set forth in P.A. 95–225. Chief among them were recommendations to provide access to previously confidential juvenile records; implement a mechanism to transfer 14- and 15-year-old juveniles who commit serious felony crimes to adult court; transfer prosecutorial jurisdiction for juvenile crime from the State's judicial branch to the Division of Criminal Justice of the Office of the Chief State's Attorney; and enhance supervision, programming, and services for all levels of juvenile offenders.

The reorganization plan also identified four areas in which new legislation would be needed to support implementation of its principal recommendations:

Expedited Construction. To realize the goal of providing a continuum of services for juvenile offenders, it would be necessary to renovate the Long Lane School, the State's principal juvenile corrections facility, and build another juvenile detention facility and a courthouse at Bridgeport, CT. Standard State construction procedures would not permit the necessary work to be completed in the timeframe envisioned by the reorganization plan. The Policy Group called for enactment of legislation that would authorize expedited construction procedures.

Transfer of Juveniles. P.A. 95–225 mandated that 14- and 15-year-olds who are charged with committing serious felony crimes be transferred to criminal court. The legislature charged the Policy Group with developing appropriate transfer procedures. The Policy Group recommended that juveniles transferred to criminal court be committed to the custody of the Department of Corrections for pretrial detention and for serving their sentences. Legislation would be required to effect the custody transfer.

New Funding. The Policy Group recommended that the State legislature repeal § 8(C) of P.A. 95–225, which required that there be "no increase in budget allocations for the department of children and families, the judicial branch, the department of corrections or the office of policy and management for the fiscal year ending June 30, 1997, but the State legislature may deploy staff and redirect funding among these agencies." The reorganization plan called for new funds in the amount of $16 million to implement the plan fully over 3 years, from the State's fiscal year 1996–97 to 1998–99. An additional $61.9 million in existing funds would be allotted over the 3-year program to support plan implementation. Legislation was needed to repeal the section of P.A. 95–225 that prohibited the allocation of new resources for the implementation plan.

Transfer of Juvenile Justice Centers. The reorganization plan called for the transfer of the management and operation of the Juvenile Justice Centers from the Office of Policy and Management to the judicial branch. The centers provide short-term, nonresidential services statewide for juvenile probation clients. However, under § 44 of P.A. 95–225, this transfer could not be made until the centers no longer received any Federal funding. Because the centers regularly received funding from Federal programs, including funds from the Federal Juvenile Justice Formula Grants Program—transfer of the centers could be postponed indefinitely. Legislative measures were recommended to remove this restriction.[323]

Implementing Reform

P.A. 95–225 represents a compromise between reformers whose principal focus was on serious juvenile offenders and reformers who, while not in disagreement with harsher treatment of serious and violent juvenile offenders, primarily were advocates for expanding programs and services to address the needs of juvenile offenders across the board.

The first reform-oriented bills introduced in the Connecticut legislature sought to require the transfer of 14- and 15-year-old juvenile offenders who commit serious felonies to criminal court. The

323. *Id.*

reform initiative, which evolved from Governor Rowland's campaign promise to pursue a transfer provision, became the centerpiece of his first spending proposal for juvenile justice. The Governor's juvenile justice proposal also sought downsizing of the Long Lane School and the expansion of services for juvenile offenders. An alternative legislative proposal deemphasized spending to support a stepped-up response to serious and violent juvenile crime and emphasized instead a substantial increase in juvenile justice programs and services.

Early in the 1995 legislative session, the legislature's Judiciary Committee began hearings on pending juvenile justice proposals, and it seemed that a major clash over system reform was likely. However, as the first hearings were about to be convened, opposing parties agreed to pursue a compromise that would reflect the strengths of both proposals. Driven by a general agreement that something needed to be done about the direction of the State's juvenile justice system, the two camps forged a compromise. P.A. 95–225 was enacted and signed into law on June 28, 1995. "When the reform bill finally passed, it contained something for everyone," a State official observed.[324]

By early 1996, Connecticut had moved forward to implement provisions of P.A. 95–225. Confidential juvenile records had been opened to prosecutors, police, and other justice system officials; the new transfer mechanism for juveniles who had committed serious crimes was in place; and prosecutorial jurisdiction for juvenile crime was scheduled for transfer from the judicial branch to the Division of Criminal Justice, an executive branch agency that handles all prosecutions of adult offenders.[325]

In February, legislation was introduced in the Senate to make the necessary statutory changes called for in the reorganization plan.[326] Also in February, a supplemental funding measure was introduced in the House that included $6.7 million in new funding that the reorganization plan recommended for implementation of the plan in the State's fiscal year 1996–97 biennium.[327] The State legislature authorized funding to support implementation of other key components of the reform plan but with $1.4 million less in new funding than had been requested by the Governor. In addition, the legislature approved an amendment to P.A. 95–225 that would facilitate the transfer of the management and operation of the juvenile justice centers from the Office of Policy Management to the judicial branch.

However, in 1996, despite continued bipartisan support for P.A. 95–225, legislation to implement two key provisions of the reform package died in the House. S. 81 would have allowed juveniles awaiting trial as criminals to be detained pretrial and to serve their sentences in adult correctional facilities and also would have provided for expedited renovation and construction of juvenile detention facilities and the courthouse at Bridgeport.

The implementation bill failed when it became embroiled in controversy surrounding unrelated issues, including two contentious intraparty leadership debates.[328] In addition, in the Republican-controlled Senate, the bill passed handily, but not before being amended to include a prison privatization measure that raised budget issues in the executive branch and was opposed vehemently by labor interests. Opponents of new spending on juvenile institutions were vocal about their dislike of the expedited construction provision.

Ultimately, the implementation bill was kept off the House calendar and thereby prevented from coming to the floor for a vote. But S. 81 was not defeated on its merits. One State official observed, "If the [transfer/expedited construction bill] had been subject to a vote strictly on its merits, it would have passed overwhelmingly."[329]

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324. *Id.*

325. OFFICE OF THE GOVERNOR, GOVERNOR ROWLAND'S PROPOSAL FOR JUVENILE JUSTICE REORGANIZATION, 2–3 (1996). The transfer of prosecutorial jurisdiction over juvenile offenders from the judicial branch to the Office of the Chief State's Attorney's Division of Criminal Justice took place on July 1, 1996.

326. S. 81, An Act Concerning the Implementation of the Juvenile Justice Reorganization Plan (Conn. 1996).

327. H.R. 5038, An Act Making Adjustments of the State Budget for the Biennium Ending June 30, 1997 (Conn. 1996).

328. Siconolfi Interview, *supra* note 307. Telephone Interview with William H. Carbone, Director, Office of Alternative Sanctions, Judicial Department (Nov. 7, 1996.) [hereinafter Carbone Interview].

329. Siconolfi Interview, *supra* note 307.

S. 81's defeat in the legislature presented State officials with an immediate need to find an administrative solution to the confinement issues raised by implementation of P.A. 95–225's provision that authorized the transfer of 14- and 15-year-olds to criminal court. Without the legal authority that S. 81 would have provided to confine certain juveniles in adult facilities, State officials needed to find placements for juveniles who were awaiting transfer to or who were adjudicated and sentenced in criminal court. With the aid of $500,000 in Federal funds from the Justice Department's Violent Offender/Truth in Sentencing grant program, a building on the grounds of an existing adult corrections facility was converted to a temporary detention facility to hold an estimated 30 to 40 juveniles awaiting transfer to criminal court. It is an expensive solution, costing the judicial branch an estimated $1 million a year to operate the facility—significantly more than it would cost the Department of Corrections to house these youth. State officials hope that it will be a temporary solution and that a bill that would fully support the transfer and be effective upon passage will be enacted in the 1997 legislative session.

A Window of Opportunity

"For every public policy issue, there exists a window of opportunity when you can most effectively address an issue. Conversely, poor timing will often doom an otherwise credible initiative," a Connecticut official observed.[330] A variety of circumstances and conditions collectively created a window of opportunity that was a major factor in Connecticut's juvenile justice system reform initiative.

Because of demographic factors, changing Connecticut's juvenile justice system arguably is easier than changing systems in many other States. Connecticut is a relatively small State with a small juvenile offender population and an even smaller population of serious and violent juvenile offenders. Such numbers can be dealt with, according to one Connecticut official.[331] Connecticut's small size likewise makes it easier to reach and convene all the people who may be needed to address a problem.

A second factor that facilitated the juvenile justice reform initiative is the State's highly centralized government. All functions of Connecticut's criminal and juvenile justice systems, except policing, are carried out at the State level. Local prosecutors are appointed by a gubernatorially appointed commission. Their activities are overseen by the Office of the Chief State's Attorney, a State executive branch agency that operates under the supervision of that commission. A decision that might involve scores of high-level officials in most States requires only a handful of very powerful executive, legislative, and judicial branch officials.[332]

Perhaps the single most significant factor in Connecticut's overhaul of its juvenile justice system was the widely supported view that the system needed reform. The public had reached the limits of its patience with the State's juvenile justice system, in particular with its handling of serious juvenile offenders. The public wanted serious and violent juvenile offenders off the street, and the bill proposed to do that. The transfer provision became the centerpiece of Connecticut's reform initiative. A State official asserted that proponents of the reform package could not have sold it without the transfer provision.[333]

Supporters of juvenile justice reform in Connecticut were aided considerably by the absence of any major opposition. Overall, there were numerous reform advocates and few detractors. The Governor, then in his first term and a strong advocate of tax cuts and reduced government spending, was willing to put forward a significant reform proposal and to find the money to pay for it.[334] The chief court administrator was a major proponent and facilitator of the reform initiative, and the State legislature, while not in complete agreement with all aspects of the Governor's proposal, was willing to support reform.

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330. *Id.*

331. *Id.*

332. Carbone Interview, *supra* note 328.

333. Siconolfi Interview, *supra* note 307.

334. *Id.*

"There were folks who might have wanted a more minimal program than what we had, who might have been satisfied with transfer alone," a State official said.[335] "And there were folks who thought that spending on Long Lane would be a waste and that we should spend money on more programs and smaller facilities. There was no one standing up and shouting it [the reform plan] down."

Even the news media, which had followed closely the State's reform of its adult corrections system, paid modest attention to P.A. 95–225's progress through the State legislature.[336] The publicity that juvenile justice reform did receive was largely favorable to the Governor's plan.

P.A. 95–225's focus on the most serious juvenile offenses resonated well and helped to minimize opposition to the measure from constituencies that wished to preserve the traditional distinctions between the juvenile and criminal systems of justice.[337] Reticence about transferring 14- and 15-year-olds was assuaged by the knowledge that the transfer provision would affect a relatively small number of offenders in the State. Any concerns about housing juveniles adjudicated in criminal court in adult corrections facilities were offset by the knowledge that these youth would in fact be placed in a special Department of Corrections facility that would house only younger inmates. Clearly, juveniles would not be housed with significantly older adult offenders.[338]

Sustaining Momentum

Connecticut has put in motion the most extensive reformation of its juvenile justice system in the State's history. State officials point with pride and some amazement at what has been accomplished in a little more than a year. Most Connecticut State officials who have played a part in juvenile justice reform are optimistic that the reform plan contained in P.A. 95–225 will be fully implemented.

Legislation to implement the custody transfer provision was to be reintroduced in the new legislature, to be seated in January 1997. Implementation legislation is needed, and there undoubtedly will be challenges on that front

Likewise, Governor Rowland's continued support of the implementation plan is critical. The Governor has consistently championed the necessary funds for juvenile justice system reform in Connecticut. His continued support will be essential in the months to come.

Juvenile justice system reform seems well underway in Connecticut. "We've made a lot of progress; it's a very good change," one State official concluded.[339]

Ohio: Sharing Responsibility for Administration of Juvenile Justice

Introduction

The administration of juvenile justice has been reformed significantly in the State of Ohio over the past 3 years. The primary reform initiative, the RECLAIM (Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors) Ohio program, provides for a community-based response to the problem of youth delinquency through the establishment of local, graduated sanctions programs. This initiative, coupled with the Ohio Families and Children First initiative (OF & CF) (a collaborative effort among all State agencies concerned with family and children's issues to support local youth-serving programs) and amended substitute H.R. 1[340] from the 1995 legislative session (which provides for more adult sanctions for serious, violent, and chronic juvenile offenders), completes the continuum of juvenile justice policy and service delivery in the State.

RECLAIM Ohio, which was implemented statewide in 1995, has served to remedy the previously strained relations between the Ohio Department of Youth

335. *Id.*

336. *Id.*

337. *Id.*

338. *Id.*

339. Carbone Interview, *supra* note 328.

340. Act of Aug. 10, 1995, Ohio Laws 48.

Services (DYS) and local juvenile court judges by creating shared ownership and responsibility for the administration of juvenile justice in Ohio.

Today, RECLAIM Ohio is well received by local courts and appears to be working. A fiscal year 1996 program overview indicates that admissions to DYS decreased 4 percent compared with fiscal year 1995 and more than 10,400 youth were served by community-based programs administered by local juvenile courts and funded with RECLAIM Ohio appropriations.[341]

RECLAIM Ohio

RECLAIM Ohio evolved from Governor George Voinovich's dedication to building families and investing in children. The OF & CF helps facilitate children's readiness for learning. The program, a predecessor of RECLAIM Ohio, places a policy and funding emphasis on prevention and early intervention activities that will minimize the need for more costly efforts later, according to an Ohio annual progress report.[342]

With this more preventive component in place, RECLAIM Ohio was developed to facilitate a similar community response for a different set of juveniles—youth already in trouble with the law. RECLAIM Ohio is a unique program that enables local juvenile courts to respond immediately and effectively to youth misbehavior by developing their own local community-based disposition programs or contracting with private and nonprofit organizations to establish them. RECLAIM Ohio was piloted in 9 Ohio counties in 1994 and became available to all 88 of Ohio's counties in January 1995.

Several factors led to the enactment of the RECLAIM Ohio legislation in 1993. Prior to the development of the program, DYS, which manages the State's juvenile corrections facilities, was allocated separate funding for the juvenile institutions it managed. County judges, often faced with pressure from their limited local budgets, thought committing a youth to a DYS secure facility was free, since sending youth to the State juvenile prison system came at no cost to the county. Thus, there was a fiscal incentive in place to commit youth to secure juvenile facilities, no matter how nonviolent the crime for which they had been adjudicated. According to a RECLAIM Ohio program overview, "It was becoming readily apparent that many of the youth committed to DYS [secure facilities]—particularly first-time, nonviolent offenders—would be better served in their local communities."[343]

This sentencing trend helped contribute to significant crowding in juvenile institutions around the State. As of May 1992, the population of juveniles in secure youth facilities had significantly exceeded the design capacity of the facilities. According to a State official, the population of youth offenders in DYS custody was 2,538, greatly surpassing the facilities' design capacity of 1,400.[344]

The overcrowded conditions created a dangerous situation for both residents and staff. Youth in DYS custody were getting hurt, and one female staff person was nearly killed. These and other unfortunate incidents caught the attention of the local press, whose reporting helped bring the issue to the public's attention. Voinovich named then-Lieutenant Governor Michael DeWine, now one of Ohio's U.S. Senators, to lead a task force to investigate the problem.[345]

The end result was RECLAIM Ohio, a collaborative, bipartisan effort developed by DeWine; Geno Natalucci-Persichetti, DYS' director; and Carol Rapp Zimmermann, DYS' assistant director, with financial and ideological support from Voinovich. According to a consultant for RECLAIM Ohio, "Governor Voinovich bought into RECLAIM Ohio 100 percent and put in some serious money. He and Geno Persichetti were very progressive to acknowledge kids were coming out worse from State institutions, and many less serious offenders would be

341. OHIO DEPARTMENT OF YOUTH SERVICES: RECLAIM OHIO, PROGRAM OVERVIEW (1996) [hereinafter RECLAIM OHIO OVERVIEW].

342. OFFICE OF THE GOVERNOR, OHIO 6TH ANNUAL PROGRESS REPORT 6 (1996).

343. RECLAIM OHIO OVERVIEW, *supra* note 341.

344. Telephone Interview with Linda Modry, Administrator, Ohio Department of Youth Services (Dec. 9, 1996) [hereinafter Modry Interview].

345. Bill Howard, *Ohio Reinvents Community Youth Corrections*, YOUTH TODAY, Nov.–Dec. 1996, at 38.

better off in corrections programs at home than being locked up with hardened delinquents."[346]

Elements of Reform. Designed to provide more local autonomy in the administration of juvenile justice, RECLAIM Ohio is a funding initiative that encourages local juvenile courts to develop or contract for a range of community-based sanctions options. The program goals are twofold: to empower local judges with more sentencing options and disposition alternatives for the juvenile offender and to improve DYS' ability to treat and rehabilitate youthful offenders.[347] RECLAIM Ohio allows local juvenile courts to create a series of different services and sanctions appropriate to the juvenile offenders who come before them.

Under the program, counties receive a funding allocation based on the number of youth adjudicated for acts in the previous 4 years that would have been felonies if committed by adults. Each month, a county's allocation is charged 75 percent of the daily costs for youth housed in secure DYS institutions and 50 percent of the daily costs for youth placed in DYS community corrections facilities. Community corrections facilities are State-funded, locally operated, dispositional alternatives for juvenile offenders who commit acts that would be considered felonies if committed by adults and who are in need of treatment in a residential facility but whose offenses do not warrant a long-term commitment to a secure DYS facility.

DYS rebates the remainder of the allocation, after the debits, to the counties each month. With those funds, counties contract for or develop community-based programs for youth adjudicated delinquent who would have otherwise been committed to DYS facilities. Examples of the 279 programs in place in Ohio counties include day treatment, intensive probation, electronic monitoring, home-based services, offense-specific programs, residential treatment, and reintegration or transitional programs. The only current limitations on the use of RECLAIM Ohio funds are that they must be funneled into programs serving youth who have been before the juvenile courts and that they cannot be used for construction, renovation, or supplanting local funds.[348]

To ensure public safety, DYS guarantees that the juvenile court may commit violent youth to DYS secure facilities even if that county has exhausted its RECLAIM Ohio allocation. This "hold harmless" clause guarantees that the juvenile courts will not have to use local funds to house more violent youth who belong in secure custody. In addition, RECLAIM Ohio includes a provision for "public safety beds" for which counties are not debited. As a result, the counties are not charged against their RECLAIM Ohio allocation for youth committed to DYS for enumerated violent crimes, such as murder, rape, manslaughter, and certain firearms offenses.

Reform Strategy. Under the RECLAIM Ohio program, the responsibility for crowding in juvenile facilities and the delivery of services to delinquent youth is not a State or a local problem but a systems challenge. The developers of RECLAIM Ohio soon realized that communities lacked resources to treat some juvenile offenders locally with appropriate and cost-effective services. At the same time, DYS found it could not provide all of the services necessary to accommodate the entire range of offenders in its 16 secure facilities.[349] By recreating the process by which juvenile sanctions are funded, RECLAIM Ohio has achieved its goal of allowing local juvenile courts to design juvenile corrections to fit community needs. DYS benefited as well from the creation of environments that best serve young offenders.

The impetus behind the reform had a historical base in the stormy relationship between many Ohio juvenile court judges and DYS. When DYS came into existence in 1980, replacing the Ohio Commission of Youth Services, Ohio juvenile court judges lobbied for more control of community-based programs and sanctions for status offenders. Thus, the DYS purview initially was limited to handling only juvenile

346. *Id.*

347. Division of Criminal Justice, University of Cincinnati, Final Evaluation of the Ohio Department of Youth Services Reclaim Ohio Pilot Project vi (1996) [hereinafter Pilot Evaluation].

348. Reclaim Ohio Overview, *supra* note 341.

349. *RECLAIM, A Reasoned Approach,* DYS Today (Dep't of Youth Svcs., Columbus, Ohio), Autumn 1996.

felons, with statutory provisions in place dictating the minimum sentences they were required to serve. This loss of State agency control stemmed from a lack of confidence on the part of juvenile judges in DYS's ability to manage.[350]

However, DYS controlled the money for community corrections—the appropriation was funneled directly to the agency, which then allocated the money to the counties. The relationship was adversarial, and there was continuing conflict over appropriations. Local judges wanted more money to send more juveniles to community corrections programs, but commitments to DYS had increased and the staff needed those funds to operate the secure facilities appropriately. This adversarial relationship left both sides frustrated, with neither taking ownership of the problem.

In May 1992, when facilities were populated at 180 percent of design capacity, with no end to these levels in sight, and with 1 in every 90 African-American youth in Ohio being committed to DYS facilities,[351] those concerned with the administration of juvenile justice in the State knew it was time to take action. Governor Voinovich encouraged DYS officials to begin a dialog with juvenile judges over developing a collaborative approach to the care, treatment, and sanctioning of delinquents. At that point, an informal dialog began between DYS officials and judges in some counties. At the same time, DYS started to review the efforts of other States to implement juvenile justice reform initiatives. DYS also tried to develop ways of incorporating the positive aspects of other programs into one that would meet the needs of Ohioans while avoiding the obstacles and unintended consequences that had emerged in other jurisdictions.

What resulted was RECLAIM Ohio, with a market-driven company (DYS) providing a service to its customers (the juvenile court judges). The DYS budget was aggregated and State officials then distributed essentially all of the appropriation to the counties. By framing the issue in economic terms and deferring significant programmatic control and funding to the local level, the RECLAIM Ohio proposal seemed like a clear choice for investing in the youth of the State.

A Skillful, Strategic Choice for Public Peace. With a program plan in RECLAIM Ohio on the table, DYS officials had one other obstacle to overcome when it brought the idea before the Governor—the proposed budget for the program plan was 133 percent of the agency's 1992 allocation. This obstacle came at a time when the Governor was asking all State agencies to cut spending, requesting that all agencies start constructing their new budgets at 80 percent of their current appropriation.

Despite the plan's additional expense and the uncertainty of how the approach would work in practice, Governor Voinovich supported the revolutionary initiative for several reasons. According to a DYS official, the Governor understood the seriousness of failing to make a sweeping change to the juvenile justice system; he also recognized that building more and more juvenile facilities was not an appropriate long-term answer. Perhaps an even greater influence, according to the official, was the Governor's pledge to help Ohio's children, which served as the catalyst for his support.[352]

The proposal put forth by the Voinovich administration gained significant bipartisan support as it moved through the legislature as part of the 1993 budget plan, and it did not go through significant revision during the legislative process. Legislators were concerned about the efficacy of the juvenile justice system and were dedicated to effecting change in the lives of these young people. Further, the DYS proposal had created an accountable system using a simple formula and "clean data"—the number of youth adjudicated for acts that would have been felonies if committed by adults—and this information was to be compiled by the counties themselves. Yet another selling point to the legislature was giving power and funding to local juvenile courts, with a good-faith effort to keep a primary component of the administration of juvenile justice

350. Telephone Interview with Carol Rapp Zimmermann, assistant director, Ohio Department of Youth Services (Dec. 17, 1996) [hereinafter Zimmermann Interview].

351. *Id.*

352. *Id.*

at the county level. A DYS official characterized the decision to embrace RECLAIM Ohio as a skillful, strategic choice for public peace.[353]

A Context Conducive to Change. The disconnection between DYS and local juvenile courts prior to the enactment of RECLAIM Ohio had created a situation in which system improvements were sorely needed. This situation, coupled with a series of articles in the Dayton and Columbus press, highlighted problems in the juvenile justice system and contributed to a public understanding that reform was imperative; building more and more facilities was not the answer.

The unions supported the initiative, which was critical to the passage of the measure. The labor representatives understood that RECLAIM Ohio did not represent an effort by DYS to downsize staff positions; rather, a higher staff-to-offender ratio would come about as a result of less crowded conditions. This served the union's interest by ensuring safe working conditions in secure institutions. Thus, labor supported the allocation of money to the counties because it understood that its interests were protected overall.[354]

Even though DYS had been soliciting input from juvenile court judges while the program was being developed, some remained opposed to the plan. A few local judges wanted to be trusted to make the right decisions for the youth who came before them and advocated for a shift of funds with no other ties. However, a majority of the county courts came out in full support of the program and praised the initiative for giving local courts the fiscal power to support sanctioning and treatment decisions based on the needs of the communities they serve. Today, an overwhelming majority of Ohio's juvenile courts strongly support the RECLAIM Ohio initiative and the transfer of decisionmaking power to local judges, despite the additional time and work involved in developing a comprehensive plan for juvenile services and sanctions options.[355]

A recently released study conducted by the University of Cincinnati, which evaluated the nine county programs that participated in the 1994 pilot of RECLAIM Ohio, found that 85 percent of county court judges, administrators, and probation officials were very satisfied with their experiences as pilot program participants. What the respondents liked most about participating in the pilot program was the ability to develop alternative ways of dealing with delinquent youth.[356] This enthusiasm and support for the program's first run spread to other counties, many of which embraced RECLAIM Ohio as soon it was available statewide in January 1995.

Another strong inducement for many county courts to participate was the financial incentives built into the program's debiting system. Before RECLAIM Ohio, local courts were appropriated funds for community corrections under the Community Corrections Grants program, which allocated $6 million to counties for community corrections. In fiscal year 1996, juvenile courts received $17.1 million after they paid their debits for DYS commitments—nearly three times the amount of State money previously channeled to the juvenile courts.[357]

Moving Toward the Future. Embracing the new program as an evolution in service delivery, the State is consistently looking at ways to improve RECLAIM Ohio by making it more user-friendly and facilitating the program's ability to effectively serve the needs of adjudicated youth. Future changes to the State's parole system may minimize the county's responsibility for those juvenile offenders who reappear before the court for a parole violation, currently an issue of concern to RECLAIM Ohio participants. Officials are also working to combine the appropriations and reporting requirements for RECLAIM Ohio and the DYS Youth Services Grants program, which provides money to local juvenile courts to fund prevention programs that attempt to keep youth from becoming involved in the juvenile justice system.

In an effort to sustain the momentum and positive feedback surrounding RECLAIM Ohio, DYS has adopted a customer service-oriented approach to

353. *Id.*

354. *Id.*

355. Modry Interview, *supra* note 344.

356. PILOT EVALUATION, *supra* note 347.

357. RECLAIM OHIO OVERVIEW, *supra* note 341.

maintaining its relationships with the local courts. A RECLAIM Ohio conference is held every year, and program meetings occur every other month for all counties that wish to participate. Both venues offer an opportunity for RECLAIM Ohio participants to discuss successes and challenges in the program's implementation.[358]

Further, DYS officials spend a significant amount of time in the field, offering counties technical assistance with the administration of their programs. DYS officials hope that these meetings and outreach efforts will lead to the preservation and sustainability of RECLAIM Ohio and facilitate a continued positive relationship with local court judges and administrators.[359]

A more accurate picture of the efforts of State and local officials and community service providers will be presented by a statewide analysis by the University of Cincinnati to elicit information on the status of the program in all 88 Ohio counties. Further, the study will look longitudinally at the impact of the program by tracking youth sentenced to various community sanctions, gauging their readjustment in their own communities, and measuring the rates of recidivism of RECLAIM Ohio participants.

Since the introduction of RECLAIM Ohio, DYS officials have seen decreased institutional populations and a greater opportunity to address treatment issues for youth in need. However, the best result, according to officials, is the shared effort in reclaiming delinquent children among the juvenile courts, DYS, and other State agencies. This newly created vision would have been unimaginable 5 years ago, officials report.[360]

Amended Substitute House Bill 1

With the successful OF & CF and RECLAIM Ohio initiatives in place, policymakers looked toward enhanced penalties for violent juvenile offenders. Legislation enacted in 1995 brought significant changes to the procedures governing the transfer of violent juveniles to adult criminal court, provided for minimum sentences in DYS facilities for youth adjudicated delinquent for certain crimes, and changed recordkeeping laws for violent juvenile criminals in the custody of the State.

Amended substitute H.R. 1, sponsored by Representative E.J. Thomas, was enacted to serve two purposes: to send a clear and powerful message to youth across Ohio that heinous and repeat violent offenses will not be tolerated in the State and to seek justice for the victims of juvenile crime and their families.[361]

H.R. 1 started as a reverse waiver provision, under which juveniles transferred to adult criminal court could petition the court to be certified back to the juvenile court. The youth had the burden of proving why he or she should be adjudicated in juvenile court. When DYS realized that RECLAIM Ohio and local jurisdictions could be adversely affected by some of these early H.R. 1 provisions, the agency participated in a collaborative effort to limit transfers to adult criminal court to habitual and violent offenders only. As a result, the Senate Judiciary Committee and the House Committee on Judiciary and Criminal Justice held hearings and facilitated a working group composed of interested parties, including State legislators, prosecutors, juvenile and adult court judges, law enforcement officials, the State attorney general, and DYS.[362]

The law, as it was enacted, makes significant changes to transfer provisions by which violent juveniles in Ohio are tried as adult criminals. The law defines category 1 and category 2 violent offenses as they relate to juveniles. Category 1 offenses include aggravated murder, attempted aggravated murder, and attempted murder. Category 2 offenses include kidnaping; rape; voluntary manslaughter; involuntary manslaughter; felonious sexual penetration; and aggravated arson, robbery, and burglary.[363] The definition of "public safety bed" was amended to include all category 1 and 2 offenses, with the exception of aggravated robbery and burglary.

358. Modry Interview, *supra* note 344.

359. *Id.*

360. Zimmermann Interview, *supra* note 350.

361. DEPARTMENT OF YOUTH SERVICES, HOUSE BILL ONE SUMMARY (on file with author) [hereinafter HOUSE BILL ONE SUMMARY].

362. Zimmermann Interview, *supra* note 350.

363. OHIO LEGISLATIVE SERVICE COMMISSION, FINAL ANALYSIS OF AMENDED SUBSTITUTE HOUSE BILL ONE (1996).

The law also created a mandatory bindover or waiver provision for violent youth. Juveniles must now be tried in adult criminal court when there is probable cause to believe that:

- A youth 14 years old or older has committed a criminal offense and has previously been found or pleaded guilty to a felony-level offense in adult court.
- A youth 14 years old or older has committed a criminal offense and is a resident of another State where he or she would be considered an adult for that offense.
- A youth 16 or 17 years old has been charged with a category 1 offense.
- A youth 14 or 15 years old has committed a category 1 offense and has previously been committed to DYS for a category 1 or 2 level offense.
- A youth 16 or 17 years old has committed a category 1 or 2 offense other than kidnaping and has previously been committed to DYS for a category 1 or 2 offense.
- A youth 16 or 17 years old has committed a category 2 offense other than kidnaping and has displayed, brandished, indicated possession of, or used a firearm in the commission of the crime.[364]

The discretionary waiver provisions were expanded to permit the transfer of 14-year-olds who have committed acts that would have been felonies if committed by an adult if the victim was 5 years old or younger or 65 years old or older. Additional considerations include whether the juvenile alleged to have committed the offense physically harmed or injured the victim, possessed a firearm when allegedly committing the offense, or failed to successfully complete previous attempts at rehabilitation.

Minimum sentences for violent youth who remain in the custody of DYS were added as a result of the amended substitute H.R. 1. Youth committing attempted aggravated murder or attempted murder will serve a 6- to 7-year DYS commitment, while those committing a category 2 offense will be required to serve 1 to 3 years. Juveniles committing crimes while brandishing guns will receive a 3-year minimum sentence, while those who have a firearm in their possession during the commission of a crime will serve at least 1 year. Finally, the act lowers to 14 the age of youth adjudicated delinquent for a category 1 or 2 offense who may be photographed and fingerprinted.

The passage of amended substitute H.R. 1 represents the "best judicial practice and temperament."[365] It provides serious sanctions for violent offenses that most participants agreed were best handled with tough sanctions. The definitions for category 1 and 2 offenses were of the type that DYS would have previously tied to public safety beds and thus did not affect the formula for the county allocation. The interested parties worked together to identify offenses that all could agree belonged in the definition of public safety beds.

Amended substitute H.R. 1 will have a long-term affect on RECLAIM Ohio. By sending older, more violent juveniles to the adult system, DYS will house younger delinquents who will have longer minimum sentences to serve. DYS officials expect this shift to happen slowly, and when it does, they acknowledge a likely need to build additional juvenile facilities based on the prototype and the needs of the offenders committed to DYS custody at that time.

Oregon: Making Juvenile Offenders Accountable

Introduction

In 1995, the State of Oregon set out to fix a juvenile justice system that the citizens and their elected officials had come to view as having failed both juveniles and the public.[366] The State's juvenile justice system "wastes lives and it wastes resources," observed Oregon Attorney General Theodore R. Kulongoski when the final report of a gubernatorially appointed

364. HOUSE BILL ONE SUMMARY, *supra* note 361.

365. Zimmermann Interview, *supra* note 350.

366. GOVERNOR'S TASK FORCE ON JUVENILE JUSTICE, FINAL REPORT 2 (n.d.) [hereinafter OREGON FINAL REPORT].

task force, charged with developing a plan to reform the system, was released in January 1995.[367] The attorney general further noted:

> Right now there are no consequences for unlawful actions. There is no certainty of punishment. There is no accountability. The result? An escalation of offenses until the conduct is so outrageous that the system is forced to respond. Is it any wonder that younger criminals consider the system a joke? Is it any wonder that Oregonians are fed up?[368]

S. 1, crafted from the recommendations of the Governor's Task Force on Juvenile Justice and endorsed by the State legislature, was signed into law on June 30, 1995, by Oregon Governor John Kitzhaber.[369] The bill prescribed a dramatic change in the philosophy of the State's juvenile justice system, calling for a shift from a child welfare orientation to an approach that would demand accountability from juvenile offenders who entered the system.[370] The measure also called for a wholesale reorganization of the system itself and proposed a broad expansion in the availability and range of services for juvenile offenders.

Oregon has made major strides in implementing key provisions of S. 1, despite having less funding than requested from the State legislature for some of the initiatives authorized in that measure. In a little more than a year from enactment of S. 1, a Department of Youth Authority had been established; four regional juvenile corrections facilities had been sited; work had commenced on the development of architectural plans for these facilities; and the expansion of existing and the creation of new programs and services for juvenile offenders had begun across the State.[371]

Oregon's Governor, State legislators, and citizens remain committed to full implementation of the reforms envisioned by the task force and S. 1.[372] However, resources and competing priorities will affect how quickly and smoothly Oregon will be able to move forward on these initiatives.

Impetus for Reform

Juvenile justice system reform in Oregon "was a long time coming," according to an Oregon State criminal justice official.[373] When it arrived, the proponents of reform set out to move the State's juvenile justice system from a child welfare model to an accountability model.[374] The Oregon juvenile justice system as it existed did not do a consistent job with juvenile offenders and did not follow through on its promises. No punishment—or at best inconsistent punishment—was the rule. Prior to the enactment of S. 1, most youth who entered Oregon's juvenile justice system were handled at the county level.[375] The majority of these juveniles received no substantial sanction in their first six or seven encounters with the system.

According to a former task force coordinator, a juvenile's first and second contacts with Oregon's juvenile justice system most often would result in an official letter. On the third or fourth contact with the system, the juvenile and the county juvenile department would enter into an informal disposition agreement under which the juvenile would agree to certain terms and conditions and the county juvenile department would agree to withhold the juvenile petition if these terms and conditions were met. In effect, the department was saying, "If you do these things, we won't pursue a petition." If the juvenile violated the informal disposition agreement, the

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367. *Id.* at 1.

368. *Id.*

369. Act of June 30, 1995, Or. Laws Ch. 422.

370. OREGON FINAL REPORT, *supra* note 366, at 6.

371. Telephone Interview with L. Craig Campbell, Vice President and Legal Counsel at The Victory Group, Inc., formerly Special Assistant Attorney General, Coordinator of the Governor's Juvenile Justice Task Force (Dec. 6, 1996) [hereinafter Campbell Interview].

372. *Id.*

373. Telephone Interview with Greg Peden, Director, Criminal Justice Services, Oregon State Police (Dec. 12, 1996) [hereinafter Peden Interview].

374. *Id.*

375. Campbell Interview, *supra* note 371.

department might proceed with a petition. Even when a petition was filed, the dispositions often were ineffective because resources were not available to back up the sanction.

When a petition finally is filed against a repeat juvenile offender, he or she is usually placed on probation. By the time a youth has had six or seven contacts with the State's juvenile justice system, the youth has "a pretty healthy contempt" for a system that has done little more than slap his or her hand, in the opinion of the former task force coordinator. If delinquent behavior persists, the youth is sent to a training center, probably for an act similar to those committed in the past. Consequently, the juvenile sees little distinction between the prior acts and the one that lands him or her in the training center. The youth might think, "I didn't do anything different this time than last time. Why am I going to the training center?"

Current and former State officials who were involved in Oregon's juvenile justice reform initiative say that its roots can be found in the State legislature's 1986 capping of the number of beds in the State's juvenile corrections system.[376] The prevailing philosophy of juvenile justice in the State legislature at that time was that juvenile offenders should receive treatment in the community and not be locked up in juvenile corrections institutions.[377] The State was not at the point of considering juvenile offenders criminals, and fewer violent offenses were being committed by juveniles 10 years ago than are committed today.[378] The capping of the number of juvenile corrections beds was intended to limit the number of juveniles incarcerated and to force the State to find alternative methods of dealing with some of these offenders. Under the State legislature's plan to decentralize juvenile corrections at that time, the State would disburse funds to the counties to support their management of juvenile offenders.[379]

By 1993, the State legislature had begun to sense the public's frustration with the State's management of the juvenile justice system and Oregon citizens' willingness to take matters into their own hands if the State would not take control of the juvenile crime problem. The public was telling its elected officials that if the government did not do something, the people would do it for them. Citizens can put forth a ballot initiative in the State of Oregon with relative ease.[380] Kulongoski also sensed the public's strong dissatisfaction with the State's juvenile justice system and the need to do something to keep citizens from taking matters into their own hands.

Providing further impetus to the call for accountability in Oregon's juvenile justice system was a shift in the political leadership in the State legislature that took place between 1993 and 1995. In 1993, the leadership in the House for the first time in recent history changed from Democratic to Republican. Two years later, Republicans also took over the Senate leadership. With these changes, the nature of the legislature became more conservative, according to the former task force coordinator.[381]

In the early 1990's, Oregon entered a recession. As a result, local revenues were cut by a citizen referendum that reduced local property taxes. In addition, counties' timber receipts were reduced as a result of restrictions imposed on timber cutting under the Federal Endangered Species Act to protect the spotted owl. As State and local revenues declined, juvenile justice reform also became a resource issue. Counties found themselves being asked to do more with less.[382]

Elements of Reform

> The . . . purposes of the Oregon juvenile justice system . . . are to protect the public and reduce juvenile delinquency and to provide fair and impartial procedures for the initiation, adjudication and disposition of allegations of delinquent conduct. *The system is founded on the principles of personal responsibility, accountability and reformation within the context of public safety*

376. Campbell Interview, *supra* note 371; Peden Interview, *supra* note 373.

377. Peden Interview, *supra* note 373.

378. *Id.*

379. *Id.*

380. *Id.*

381. Campbell Interview, *supra* note 371.

382. Peden Interview, *supra* note 373.

and restitution to the victims and to the community. The system shall provide a continuum of services that emphasize prevention of further criminal activity by the use of early and certain sanctions, reformation and rehabilitation programs and swift and decisive intervention in delinquent behavior. The system shall be open and accountable to the people of Oregon and their elected representatives. [Emphasis added.][383]

S. 1 prescribed and authorized sweeping changes in Oregon's juvenile justice system. At the heart of the measure was a philosophical reorientation of that system. The preamble of S. 1 reflected a shift from a rehabilitation- and restoration-oriented juvenile justice system to one of accountability and punishment.[384]

The State's juvenile corrections system was a particular target of Oregon's juvenile justice system reform initiative. "Juvenile corrections is the orphan of both our child welfare and criminal justice systems . . . [w]henever a choice is made about resources for adult corrections, child welfare or juvenile corrections, juvenile corrections ends up at the bottom of the list," Attorney General Kulongoski stated.[385] The juvenile corrections system must become "the advocate for the bad kid,"[386] he asserted, by ensuring that there are certain and consistent responses to the youth's actions.

To provide separate and independent status for juvenile corrections in the State, the bill called for the creation of a Department of Youth Authority (DYA) that would ensure, as its central mission, that adequate, available funding and administrative resources would be focused on juvenile crime.[387] This action would elevate responsibility for oversight of juvenile corrections from an office within the Child Services Division of the Oregon Department of Human Resources to executive cabinet-level status.[388]

S. 1 also authorized the construction and operation of regional maximum security juvenile corrections facilities to provide the highest level of custody and staff supervision in the State's juvenile justice system.[389] It also provided the newly created DYA emergency siting authority to expedite the location and construction of these secure facilities.[390]

Under S. 1, the State's juvenile code was amended to expand the list of serious and violent crimes for which a juvenile must be prosecuted as an adult to include aggravated murder; conspiracy, solicitation, and attempt to commit aggravated murder; and conspiracy, solicitation, and attempt to commit murder.[391] S. 1 also amended existing law to require adult prosecution for 12-year-olds charged with aggravated murder, murder, or one of the forcible sex offenses,[392] and to allow public access to most[393] juvenile records, specifically information in those records concerning the juvenile's name and date of birth; the act that the juvenile is alleged to have committed; the date, time, and location of any proceeding against the juvenile; and the disposition of any petition filed against the juvenile.[394]

Equalizing Service Needs. S. 1 also called for the creation of a multitier infrastructure for its juvenile justice system. This strategy would provide a broad range of disposition options and services for juvenile offenders in addition to providing services to those youth who would require placement in secure juvenile facilities.[395]

With their proposal to create a multitier system of services for juvenile offenders, the Governor's Task Force on Juvenile Justice and the State legislature balanced the call for tougher sanctions for repeat

383. S. 1, § 1a (1), 1995 Or. Laws Ch. 422.

384. Peden Interview, *supra* note 373.

385. OREGON FINAL REPORT, *supra* note 366, at 8.

386. *Id.*

387. *Id.* at 7.

388. *Id.* at 6.

389. *Id.* at 9.

390. *Id.* at 6.

391. *Id.* at 13.

392. *Id.*

393. *Id.* at 8.

394. S. 1 § 68 (5), 1995 Or. Laws Ch. 422.

395. OREGON FINAL REPORT, *supra* note 366, at 8.

juvenile offenders with a commitment to provide the same level of program and services at each tier of the juvenile justice system. "The difference between each tier of the system is the level of security and direct supervision required and provided. Each tier will have the same core programs, services, and policy," the task force explained in its recommendations.[396]

The consensus of advocacy groups opposed to the initiative to create a punishment-centered juvenile justice system was that by increasing the "back end" of the system, the task force was ensuring that these youth would not improve their chances of reforming.[397] The task force's recommendation to equalize services at all levels of security in the juvenile justice system was an attempt to balance the focus on punishment by responding to the concerns of advocates that Oregon's juvenile justice system provide a broad continuum of services for juvenile offenders.[398]

To further its objective to create a multitier juvenile justice system, S. 1 authorized the operation of youth corrections assessment centers at each regional maximum security juvenile corrections facility to provide accurate, thorough screening and evaluation of young offenders in order to ensure appropriate placement within the system.[399] S. 1 also called for the creation of youth accountability camps and restitution centers to provide a highly structured regimen of work, physical and mental discipline, and community service sanctions to instill a work ethic, build vocational skills, and develop individual accountability and responsibility through payment of restitution to both the victim and the community.[400]

In addition, S. 1 provided for the creation of regional residential academies to provide year-round educational, vocational, and life-skills training on secure, closed campuses,[401] while authorizing DYA to contract with counties to handle services for and supervision of first-time, nonviolent juvenile offenders.

Finally, S. 1 created a sentencing review procedure for juveniles sentenced as adults for nonviolent offenses. Under the second-look procedure, the sentencing court would review the progress of eligible juveniles in the custody of DYA who had served at least one-half of the sentence imposed. The court would determine further commitment or appropriate disposition.[402] The sentencing court would have the option of continuing the juvenile's sentence as imposed or ordering the juvenile's conditional release under the supervision of the Oregon Department of Corrections. The juvenile would have the right to counsel and to examine witnesses and records offered in evidence during the hearing. The Department of Corrections would have the right to appeal a sentencing court's decision to place a juvenile on conditional release.[403]

The Reform Strategy

The engine of Oregon's far-reaching juvenile justice reform initiative was the Governor's Task Force on Juvenile Justice, created by former Governor Barbara Roberts. Under Executive Order 94–01, issued by Governor Roberts in January 1994, the task force "was directed to examine Oregon's juvenile justice system, to identify the components of the system that are working and those that were not, and to help amend and reform the system to meet current and future needs."[404]

Attorney General Kulongoski was appointed task force chair by Governor Roberts and authorized to appoint the other task force members, who included the president of the State Senate, two circuit court judges, the State police superintendent, a local chief of police, a law professor, a private attorney, and a businessman.

The task force was aided in its work by 10 subcommittees and working groups involving more than 80 individuals. Between January 1994 and the release of its final report a year later, the task force and its subgroups met 52 times. The task force accepted as its mission the drafting of a comprehensive and

396. *Id.* at 9.

397. Peden Interview, *supra* note 373.

398. *Id.*

399. OREGON FINAL REPORT, *supra* note 366, at 9.

400. *Id.* at 10.

401. *Id.*

402. S.1, § 53 (1)(b), 1995 Or. Laws Ch. 422.

403. S.1, Ch. VI, 1995 Or. Laws Ch. 422.

404. OREGON FINAL REPORT, *supra* note 366, at 3.

specific blueprint for reform of the State's juvenile justice system. That blueprint would be based on seven standards and principles:

- Accountability and responsibility for an individual's conduct.
- Community and family protection and safety.
- Certainty and consistency of response and sanctions.
- Effective and closely supervised reformation and rehabilitation plans and programs.
- Early intervention and prevention.
- Parental involvement and responsibility.
- Highest and best use of available resources.[405]

Implementing Reform

Oregon's multifaceted initiative to reform its juvenile justice system has not been without hurdles and compromises. S. 1 itself reflects major wins and losses for all parties involved in the initiative.

Two concurrent patterns of thought were evident among proponents of juvenile justice system reform in Oregon.[406] One group of reform advocates asserted that the State did not do enough when a youth first enters the system. Those reformers argued that if appropriate action were taken the first time a juvenile comes in contact with the system, there might not be a second time. The second school of thought argued that consistent measures need to be taken over a longer period with persistent juvenile offenders.

At the same time, both the task force report and S. 1 reflect nonpartisan, broad-based support for reform. No major source of opposition to juvenile justice system reform was present in Oregon. The greatest danger to the reform initiative was that some partisan opposition to the initiative would evolve around the proposal to build new juvenile corrections facilities.

One key task force proposal calling for the creation of a Youth Offender Review Panel never made it into S. 1. The review panel, as conceptualized by the task force, would have been an independent, gubernatorially appointed body that would make decisions about placements of juvenile offenders in programs and facilities managed by DYA. The review panel was intended to insulate administrators of juvenile institutions from the negative consequences of placement decisions. Proponents of the proposal asserted that juvenile corrections administrators had to make placement decisions based on resources. According to the former task force coordinator, the question was how to transition a person from one place to another and "take it away from the [juvenile corrections] administrator. Superintendents [of juvenile institutions had been] burned by probation decisions. They [the juvenile corrections administrators] were looking for protection. The panel [would not be] bound by these restrictions."

When asked how proponents of the Youth Offender Review Panel proposal would free the panel from resource constraints in their placement decisions, the former task force coordinator responded, "I don't know. We were hoping that we would get more resources [from the State legislature] than we did for juvenile crime."

The panel proposal ultimately was dropped from the State's juvenile justice reform initiative because of its resemblance to a parole board and concerns about the potential cost of financing the panel. The Oregon State legislature does not view parole boards favorably. The State no longer allows early release from prison or good time because the parole board made decisions on offenders who went on to commit some crimes against children. Opponents of the panel proposal also saw a possibility that a review panel would be more liberal and would continue the past approach of emphasizing treatment for juvenile offenders rather than accountability.[407] The legislature also viewed the panel as potentially too costly, whether it was administered centrally by the State or regionally by the counties. The panel would be required to meet frequently, and expenses would mount up quickly. The panel would also require a

405. *Id.*

406. Campbell Interview, *supra* note 371.

407. *Id.*

large travel budget unless two or more youth review panels were established.

The State legislature also rejected a proposal to amend Ballot Measure 11 and remove certain offenses from the mandatory minimum requirement, including unlawful sexual penetration II and kidnaping II.[408] Likewise, the legislature applied the second-look provision to youth 13 and 14 years old, a much narrower focus than the task force recommendation.[409]

By the end of 1995, the regional secure juvenile correctional facilities had been sited. As 1996 drew to a close, the development of architectural plans for those facilities was underway.[410] Proposed siting for the secure facilities met with mixed reviews around the State, with some communities objecting to the location of a juvenile corrections facility in their midst and others welcoming the possibility, largely on economic grounds. In the end, the State succeeded in selling its proposal to site the facilities by proving that these institutions would be secure and safe.[411]

Making Things Happen

When the momentum for juvenile justice system reform began to build in Oregon, things fell into place, according to one State official.[412] Once the task force report came out, it became clear changes would be made in the juvenile justice system.

Three principal factors facilitated juvenile justice reform in Oregon: the leadership of Attorney General Kulongoski, who chaired the Governor's Task Force on Juvenile Justice; the belief of criminal justice professionals around the State that changes needed to be made in the system; and the evolving power of the citizen initiative in Oregon.[413]

The most important element of Oregon's juvenile justice reform movement was the leadership of the attorney general.[414] The former task force coordinator asserted that no one was ever able to get people together on juvenile justice before the task force was convened. Most of the officials who came together to develop a plan for juvenile justice reform in Oregon did so because of the attorney general.

Attorney General Kulongoski recognized the need to respond to criticisms of the State's juvenile justice system.[415] His office and the State's juvenile administrators' association cohosted a statewide juvenile justice summit in the summer of 1994 during which participants identified numerous changes that needed to be made in the juvenile justice system. One of the more glaring deficiencies identified was the way the State was dealing with violent juvenile offenders.[416] Many more violent offenses were being committed in Oregon than the State was prepared to deal with, according to a State official. The State legislature's cap on the number of State juvenile corrections beds was still in place, because the intent of the old system was to provide for juveniles on the community level.[417]

Criminal justice professionals across the State were beginning to fear that change in the State's juvenile justice system might be driven by a citizen initiative. The criminal justice professionals believed that they needed to take action if they were to avoid being steamrollered by the ballot measure process.

The State Ballot Initiative. Oregon citizens' increased use of the ballot initiative to influence its elected and appointed government officials was a major factor in setting into motion the State's reform of its juvenile justice system. Through these ballot initiatives, Oregon citizens were expressing their dissatisfaction with the current system and their desire for immediate change.[418]

In Oregon, this citizen initiative movement moved quickly from the reform of the State's tax structure to reform of the State's criminal justice system. Although early criminal justice citizen initiatives aimed

408. Peden Interview, *supra* note 373.

409. *Id.*

410. *Id.*

411. *Id.*

412. *Id.*

413. *Id.*

414. Campbell Interview, *supra* note 371.

415. Peden Interview, *supra* note 373.

416. *Id.*

417. *Id.*

418. *Id.*

at reform of the State's sentencing structure and crime victims issues were largely unsuccessful, the political clout of advocates of these reforms was growing in the State legislature, and elected and appointed officials saw a need to take seriously the potential of these initiatives as the public began to clamor for reform of Oregon's juvenile justice system.[419]

The fear felt by juvenile justice professionals was realized by the passage of Ballot Measure 11 in November 1994. The initiative requires that youth ages 15, 16, and 17 be tried in adult criminal court if alleged to have committed specified violent crimes, including robbery, kidnaping, and various sex offenses. Further, the measure outlines mandatory minimum sentences for these offenses, ranging from 5- to 25-year sentences. If convicted, the youth may be placed in the physical custody of the Oregon Youth Authority until he or she reaches the age of 25, although the offender remains in the legal custody of the Department of Corrections.

Realizing Reform Objectives

Proponents of juvenile justice system reform in Oregon know that they will continue to face new challenges as they seek to sustain the reform momentum generated by the work of the Governor's Task Force on Juvenile Justice and the enactment of S. 1. The State legislature is not expected to devote as much attention to juvenile justice system reform initiatives in the 1997 session, and securing adequate funding to continue progress on implementation of S. 1 provisions will continue to be an issue.[420]

Oregon's counties are expected to ask the State legislature to provide them with the authority and funding to assume a greater responsibility for management of juvenile offenders than currently is authorized under the 1996 law.[421] The counties would like the legislature to authorize their management of juvenile offenders from first contact with the juvenile justice system to the offender's commitment to a State-operated juvenile corrections institution. Under current law, the counties are authorized to handle juvenile offenders until they are placed on probation with an out-of-home placement.

In the 1997 legislative session, Governor Kitzhaber was expected to pursue enactment of legislation to revise the second-look provision of S. 1 to authorize its broader application as originally envisioned by the task force.[422] In addition, the legislature may consider narrowing the list of offenses that require a mandatory minimum sentence under Ballot Measure 11.[423]

Governor Kitzhaber also would like to complement reform of the State's juvenile justice system with increased spending on programs and services to prevent juvenile crime.[424] The State legislature is sympathetic to the Governor's views, insofar as such programs can be shown to be effective, L. Craig Campbell, the former coordinator of the Governor's Juvenile Task Force explained, but could be expected to continue its focus on juvenile corrections in the 1997 session.[425] Although everyone agrees that the solution to the juvenile crime problem is not at the back end of the juvenile justice system and although Oregon remains committed to prevention, the line must be held on juvenile corrections due to limited resources, he observed.

The former coordinator calls juvenile justice reform in Oregon a "10-year story."[426] Likewise, implementation of the reforms authorized by S. 1 will be a multiyear endeavor.

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419. *Id.*

420. Campbell Interview, *supra* note 371.

421. *Id.*

422. Peden Interview, *supra* note 373.

423. *Id.*

424. Campbell Interview, *supra* note 371.

425. *Id.*

426. *Id.*

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Chapter IV
Observations Concerning State Juvenile Justice Reform

Although State juvenile justice reform initiatives and policies vary from State to State, several common themes characterize State responses to juvenile delinquency and violent youth behavior. Further, the opportunities and obstacles encountered by States that have undertaken comprehensive juvenile justice reform efforts can provide useful lessons for other States looking to undertake broad juvenile code revision, or for those looking to amend and revise very specific pieces of legislation governing juvenile justice in the State.

Several observations or themes can be generalized from the research and analysis done by National Criminal Justice Association staff concerning the initiation, formulation, and implementation of juvenile justice legislation in the States. The most visible legislative impetus is the perception of juvenile offenders as acting ruthlessly and without remorse. The resulting fear and anger over violent juvenile crime has caused a shift of the overall purpose of many juvenile codes and juvenile courts to one focusing on the accountability and punishment of young offenders. This emphasis replaces or complements the former, more rehabilitative approach to juvenile justice policy common to most States' laws since the inception of a separate system of juvenile justice nearly 100 years ago.

Although recent juvenile justice reform often focuses on this more punitive objective through "get tough" policies—such as waiver to adult criminal court, enhanced penalties for firearms offenses, and open records—States also have enacted legislation that facilitates early intervention services for juvenile offenders who are acting out or have exhibited delinquent behavior of a less serious or violent nature. Initiatives such as parental responsibility laws and the development of graduated sanctions programs are an attempt by policymakers to address errant behavior of delinquent youth before it becomes problematic or violent in nature. In other words, the focus on and media attention paid to so-called violent juvenile "superpredators" has raised the issue of juvenile justice on a general level and has exposed gaps in the way offenders at all stages of delinquency are treated in State juvenile justice systems.

Further, States are moving toward curbing juvenile crime by cutting across agency, institutional, and jurisdictional boundaries. Although States differ in their political, social, and economic climates, most are responding to changes in patterns of juvenile crime and violence by creating policies that incorporate many of the following core concepts and institutions: strengthening and preserving families; taking steps to facilitate agency collaboration in the treatment and punishment of young offenders; encouraging local responses and community-based solutions to juvenile violence and victimization; and ensuring accountability and tough sanctions for those juveniles who do commit crimes of violence.

Whether States enact single juvenile justice initiatives or undertake comprehensive revisions of their juvenile codes, policymakers are often treading in uncharted waters. Many of the system reforms being undertaken, whether traditional or innovative, are based on little evidence to support their efficacy. Thus, potentially, there are 50 miniature laboratories in which juvenile justice policy is being tried and tested. Programs designed with evaluation in mind will contribute the most to the future of juvenile justice policy development by determining what works and what does not.

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Recommendations

Several lessons can be learned and cautions should be heeded when policymakers consider revising juvenile justice legislation. One lesson relates to the impact that a new program will have on the juvenile justice system as a whole. Changes made to one part of the system will not exist in isolation, but will have an impact on the delivery of juvenile justice services for all who have contact with it. This phenomenon, which is compounded by limited programs, services, and budgets, may mean that appropriations to pay for a new program may come at the expense of other juvenile justice programs. For example, how does the enactment of a law holding parents responsible for the delinquent behavior of their children affect probation caseloads? Does the implementation of a curfew ordinance diminish available law enforcement resources and personnel? These and similar questions should be addressed in order to avoid the negative consequences of well-intentioned policy initiatives. On a similar note, policymakers should be aware that a comprehensive change in juvenile justice policy or law will affect not only the juvenile justice system but other State agencies whose primary responsibilities are to provide services to children and families.

Aside from resource obstacles and unintended consequences, logistics, systems inconsistencies, and administrative burdens may impede the implementation of well-designed legislation. States enacting comprehensive juvenile justice reform legislation should consider the practices already in place and calculate whether changes to them are necessary, how difficult the changes will be, and what new administrative options are available. In addition, policymakers should be aware that the actions of other players, especially those in the juvenile justice system, affect the implementation and use of sanction options. For example, it is important for policymakers to draft legislation broadly enough to encourage juvenile court judges to use their discretion in determining whether to impose a specific sanction or, conversely, to narrowly construct a statute to support a more consistent use of certain dispositions.

Further, States need more effective tools for determining what implementation challenges are inherent in juvenile justice reform and administration. Much of the information available to State policymakers focuses on the types of policies being initiated. Much less information is available on what works, why it works, how it came to be effective, and what factors States need to consider in replicating it. By looking beyond policy initiation to the formulation of programs and the implementation and evaluation of existing policies, States may be better able to decide what types of juvenile justice prevention, sanction, and treatment programs should be made available to the youth of the State or jurisdiction.

One tool that States have available, in the absence of empirical analysis, is to study existing juvenile justice policies and initiatives in other States. States can look at initiatives previously undertaken in other States when formulating new juvenile justice policies to familiarize themselves with what works, what does not, and what types of obstacles may interfere with policy implementation. Further, the preliminary blueprint provided by looking at other State initiatives can be honed and modified to fit local environments and the specific needs of the State. The National Conference of State Legislatures, for example, provides information to State legislators on trends in State legislation, innovative and effective programs and strategies, and available resources at the Federal level.

Conclusion

State efforts to combat youth violence and delinquency have taken many forms. From prevention to deterrence through tough, accountability-based sanctions to innovative blended sentencing options, policymakers are searching for programs and policies that effectively stop juveniles from becoming lifelong criminals. Efforts to facilitate an immediate and appropriate response to juvenile violence and delinquency have resulted in many States enacting legislation to promote a continuum of services to juvenile offenders, although the efforts have been piecemeal in some States, because not all States have passed laws or possess the necessary funding to offer a full range of services to juvenile offenders.

Many States in the past few legislative sessions have made dramatic changes to their juvenile codes, with a policy emphasis on promoting accountability of

youth offenders, while devising new programs to intervene effectively in the lives of delinquent youth. The case studies from Colorado, Connecticut, Ohio, and Oregon reflect the opportunities that abound through comprehensive reform initiatives and the difficulties in formulating and implementing new policies to have an impact on the incidence of juvenile violence and delinquency.

State lawmakers need current information about the challenges and difficulties in legislating programs and policies to combat youth crime. Consideration of the political, budgetary, and administrative obstacles and opportunities present in the milieu in which these critical policy decisions are made is crucial to ensuring that services and sanctions for delinquent youth are both appropriate and reflective of the legislative policies and goals that States are seeking to achieve. This report has supplied some of that information.

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